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Domestic Workers and their access to childcare: A Socio-Legal study

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ABSTRACT

This dissertation explores how domestic workers within the Cape Town area access childcare. From this exploration, the argument that the state should provide childcare to mothers as a redress measure under s9(2) is developed. This argument is drawn from the proposition that universal access to childcare has the potential to reduce gender inequality by removing the care burden that women bear. By providing universal access to childcare, and thereby removing or reducing the care burden, women are better empowered to access income earning activity. This qualitative enquiry utilises a literature review and one-on-one interviews as modes of data collection. Eight interviews were conducted on the experiences of domestic workers. A feminist methodology was adopted in the collection and analysis of the data, which led to the finding that greater state intervention is needed into the lives of domestic workers so that they may realise substantive equality. This Constitutionally based legal analysis is used as a means of understanding social transformation through the experiences of the participant group.

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CHAPTER ONE

INTRODUCTION

The aim of this dissertation is to consider the relationship between equality and the provision of childcare in the context of the Constitution's transformative vision. This relationship is examined practically through research on how women employed as domestic workers in South Africa experience access to childcare.¹ The challenge in the South African legal system is to move from an aspirational Constitution, to policies and services that practically deliver on the change promised in the country's highest law. This study explores the experiences of domestic workers, and through their experiences foregrounds their inherent humanity. The recognition of inherent humanity is the primary content of the Constitutional rights to dignity and equality. These rights have a rich and well-developed jurisprudence in the courts, as well as new and innovative legislative interventions.² However, until all South Africans achieve a real equality, there will continue to be a need for further state action.

The South African Constitution is a law with a macro-level transformative goal. That goal is to overcome the inequality and discrimination of the apartheid state, and to achieve a country that 'belongs to all who live in it, united in our diversity.'³ Gqola writes that we currently face a difficult task of normalising freedom in the new South Africa, which is complicated by the fact that 'political freedom was achieved and yet this

¹ Sectoral Determination 7 defines as domestic worker: 'any domestic worker or independent contractor who performs domestic work in a private household and who receives, or is entitled to receive, pay and includes -

(a) a gardener;

(b) a person employed by a house hold as a driver of a motor vehicle; and

(c) a person who takes care of children, the aged, the sick, the frail or the disabled;

(d) domestic workers employed or supplied by employment services.'

This study only considers women who perform domestic work in a private household.

² The jurisprudence on equality has been explicated by the Constitutional Court in cases like *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC) and *Minister of Finance and Other v Van Heerden* 2004 (6) SA 121 (CC). The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 is an example of the legislative intervention based on the rights of dignity and equality.

³ Constitution of the Republic of South Africa of 1996 at the preamble.

achievement continues to be contaminated by – and intertwined with – various forms of unfreedom,⁴ one of which is continued economic marginalisation.⁵ This struggle is on going, in spite of the ‘transformative Constitution’ in place.⁶ It warrants continued examination of how society has transformed, and what work still needs to be done before key groups – such as domestic workers – live in a state where freedom is normal. The laws that operate under the Constitution are required to recognise the most vulnerable members of society and address their struggles in achieving substantive equality.⁷ The apartheid state’s legislated system of oppression channelled black women – excluded from meaningful education and quality jobs – into domestic work.⁸ As a result, domestic work is often described as the last bastion of apartheid.⁹ Because of this lasting legacy, the domestic work sector offers a rich site to analyse Constitutional gains over time.

Gender, Race and Class

Although racism, sexism and classism are problems the world over, they take a particular form in South Africa as a result of the political, legal and economic legacy of apartheid. To fully appreciate the potential impact of the Constitution on domestic workers, it is necessary to consider the triple oppression that they are subject to.¹⁰ Under apartheid it was observed that ‘African women are oppressed in three ways: oppressed as blacks, oppressed as women, and oppressed as workers.’¹¹ Domestic work was, and continues to be, one of the main areas of employment for black women.¹² Gaitskell et al wrote that ‘the substance of gender subordination varies

⁴ Pumla Dineo Gqola *Reflecting Rogue* (2017) 14.

⁵ Gqola draws on the work of Njabulo Ndebele in this analysis; who coined the phrase ‘normalising freedom.’

⁶ The concept of transformative constitutionalism can be attribute to Karl Klare’s 1998 article ‘Legal Culture and Transformative Constitutionalism’. It is fully described in former Chief Justice Pius Langa’s speech ‘Transformative Constitutionalism.’

⁷ Pius Langa ‘Transformative Constitutionalism’ (2006) 17 *Stellenbosch Law Review* 351.

⁸ Jacklyn Cock *Maids and Madams* (1989).

⁹ Jennifer Fish *Domestic Democracy: At Home in South Africa* (2006).

¹⁰ Cock op cit 8.

¹¹ Deborah Gaitskell, Judy Kimble, Moira Maconachie & Elaine Unterhalter ‘Class, race and gender: Domestic Work in South Africa’ (1983) 10 *Review of African Political Economy* 86.

¹² Gaitskell et al op cit 11 at 86.

according to racial and class specifics.¹³ The specific class dynamic that is attached to domestic work stems from who most often performs it; globally, domestic work is most often performed by 'socially inferior groups' because of the low value attached to the sector.¹⁴ The usually low paid and monotonous work is performed by people with no other options – because they do not have the social or educational resources to access more lucrative forms of employment.¹⁵

One of the ways women continue to experience gender-based inequality is in the disproportionate burden they shoulder to perform care work. Fudge writes that 'so long as men can choose not to do domestic labour, women will have no choice but to do it.'¹⁶ When it comes to the performance of tasks that comprise domestic work, it is more naturally assumed that a woman would do them because they form the classic cohort of 'women's work' – cooking, cleaning and childcare.¹⁷ Women will often have no choice but to perform these tasks in their own homes, and because they are limited in the forms of employment they can take up, end up performing them in the homes of others.

Poverty and class continue to have a racialised character in South Africa.¹⁸ Although many people from groups oppressed under apartheid are moving into the middle class, those that make up the poorest groups and most under-resourced communities are black.¹⁹ The racialised stratification of South African society means that black people will struggle to access the

¹³ Gaitskell et al op cit 11 at 86.

¹⁴ Gaitskell et al op cit 11 at 88.

¹⁵ Nkosinathi Gama & Lodene Willemse 'A Descriptive Overview of the Education and Income Levels of Domestic Workers in Post-Apartheid South Africa' (2015) 80 *GeoJournal* 721.

¹⁶ Judy Fudge 'Gender, Equality and Capabilities: Care Work and Sustainable Development' in Novitz T & Mangan D (eds) *The Role of Labour Standards in Development* (2011) at 53.

¹⁷ Gaitskell et al op cit 11 at 87.

¹⁸ The racial classification used by the apartheid government continues to influence the socio-economic realities of South Africans to this day. Racial classifications made by the state divided people into 'white,' 'coloured,' 'black' based on appearance. References to race in this dissertation proceeds from this history, and its continuing impact on people.

¹⁹ Nicola Smit & Letlhokwa Mpedi 'Decent Work and Domestic Workers in South Africa' (2011) 27 *The International Journal of Comparative Labour Law and Industrial Relations* at 316.

same educational resources and employment opportunities as white people do. As a result they are channelled into low-paying and insecure forms of employment, such as domestic work.

Domestic Work in South Africa

The figure of a domestic worker has a very particular position in South African society. In 2017, they are both a symbol of the unchanging nature of racialised oppression in South Africa, as well as the inequality that perpetuates the market for domestic work.

Household surveys conducted by Statistics South Africa reveal that approximately one million people are employed as domestic workers in South Africa, with the majority of that number being made up by women.²⁰ Although the sector experiences minor shifts, this number has remained fairly consistent in recent years.²¹ Although there is no reporting on the racial demographic of the sector, the racialised inequality in South Africa presupposes that many, if not all, of the women employed as domestic workers are from race groups that were historically oppressed by apartheid. The contours of life as a domestic worker will have specific ramifications on how they are able to look after their children. It impacts the way in which their time is allocated, the resources they have available for housing, food and childcare, and may even dictate whether they are able to live with their children or not.

Domestic work in South Africa occupies a unique position within the labour field. It is both a highly regulated sector, through government interventions, and still highly marginalised due to the intimate nature of the work involved. The legal regime is interesting in the protection it seeks to

²⁰ In the period of January – March of 2017, approximately 10 070 000 people were employed as domestic workers, 96% of which were women. Stats SA did not report the demographics of race in the sector. Statistics South Africa, *Quarterly Labour Force Survey 2017 Statistical Release P0211 quarter 1* (Pretoria: Statistics South Africa).

²¹ Dinkelman & Ranchod noted in 2010 that about 1 million women were employed in domestic work. This is similar to the statistic 2017, captured in note 23.

extend, and the ways in which it has impacted the sector. Although many domestic workers now benefit from the legal protection extended to them, they are often unable to realise the full benefit that black letter law promises.²² This purely legal intervention provides lessons on different means that should be considered when targeting domestic workers. The limited efficacy of purely legal interventions suggests that more needs to be done to further realise substantive equality.

The Law and the Provision of Care

There are multiple Constitutional provisions in which the provision of childcare by the state could be grounded. It is most commonly understood through the best interests of the child standard in s28.²³ Section 27 of the Constitution creates a right to social security that could be interpreted to include the provision of childcare, because without it, unemployed persons may not have the ability to seek income-earning work.²⁴ It could also be justified under s9(2), where the Constitution allows for legislative and other measures to be taken in order to promote the achievement of equality. The particular discrimination that women in poverty experience highlights the need for legislative intervention into their lives in order to attain equality. Finally, it has also been suggested that the provision of childcare should be included in the right to citizenship.²⁵

The Children's Amendment Act (the CAA)²⁶ regulates the provision of childcare in South Africa. Under the authority of this Act, the Department of Social Development has established a policy that focuses on supporting access to early childhood development through state assistance and

²² Shireen Ally, *From Servants to Workers: South African Domestic Workers and the Democratic State* (2009).

²³ Section 28(2) of the Constitution mandates that the best interests of the child are of paramount importance in every matter concerning the child. This is referred to as the best interests of the child standard created in law.

²⁴ Beth Goldblatt 'Citizenship and the Right to Child Care' in Gouws A (ed) *(Un)thinking Citizenship: Feminist Debates in Contemporary South Africa* (2005) at 121.

²⁵ Ibid.

²⁶ 41 of 2007.

coordination.²⁷ The downside of the legislation and the policy is that the state is classed as a secondary provider of childcare.²⁸ The legislation does not create a justiciable right to childcare; it only requires the state to prioritise funding to underserved communities. The policy provides the framework under which access to childcare is to be made more readily available. Because the focus of the policy is on educational development, it does not include an acknowledgement of the benefits that could accrue to the parents whose children attend Early Childhood Development centres. This approach serves to make the provision of care the concern of individuals. However, the widespread socialisation of care²⁹ has the potential to disrupt traditional gender roles within the family, and help women realise a more mature equality under the Constitution.

Contribution

This dissertation provides an updated insight into the experiences of domestic workers. Their particular history makes them an important touchstone with which we can examine the faults or triumphs of South African society. The interviews I conducted revealed a shift from home care to the use of crèches. This is suggestive of change in the way care is accessed. The interviews also made apparent that education and employment are intimately woven together both in the minds of the participants, and the structure of the laws that regulate this area. This updated insight into the lives of domestic workers on this issue shows a shift in their experiences. Care has now acquired an educative imperative – made realisable by the transition to a democratic state that has placed a high value on the right to education.

²⁷ Department of Social Development *National Integrated Early Childhood Development Policy* 2015.

²⁸ Ibid at 22.

²⁹ The idea of ‘socialisation of care’ is drawn from Ally’s work on the provision of care in ‘From Servants to Workers.’ This phrase refers to government responsibility for the provision of care, in contrast to the ‘privatisation of care’ wherein the parent or guardian bears the full burden of securing care for their dependents.

The particular experiences of women in this study and those from previous literature are drawn on to advance the argument that the provision of childcare should be conceptualised as a redress measure, under s 9(2) of the Constitution. While the provision of childcare is still essentially a social protection aimed at the children who benefit from it, classifying the widespread provision of childcare as a redress issue adds the imperative of gender equality into the equation. The provision of ECD services is currently delivered within the scope of a s27 understanding of the service – as a protection aimed at the child, and if their parents cannot afford it, the state provides a subsidy. If care is, instead, conceived as a form of redress it is no longer subject to narrow state assistance only in cases where a caregiver is unable to afford it. It can then acquire a broader delivery imperative because of the potential it has to address gender-based oppression by displacing the disproportionate care burden that women experience.

Going Forward

The structure of this dissertation is as follows: chapter 1 has considered the context in which the research conducted is situated before stating the contribution to the literature that it makes. Chapter two canvasses the existing literature on the theories informing the provision of childcare. It then examines social security in South Africa, because of the theory that childcare may be provided as a social security. Thereafter, it lays out the literature on domestic work, looking first at the general description of the sector, and then considering the more specific themes of organisation and regulation, and the existing research on access to care. Chapter three deals with the methodology that informed the methods design used to collect data on the experiences of domestic workers in Cape Town. It further details the limitations of the study. The findings from the interviews are described in Chapter four, following the core themes that emerged. This chapter outlines the solutions used by the participants, and describes the conditions of employment, as well as the importance of the idea of education, and the prevalence of unemployment. It subsequently describes how domestic work

impacts the participants' time usage. Finally it highlights other socio-economic factors that became apparent from the interviews. Chapter five discusses how the interviews show different elements of stasis and change when considered in light of the existing literature on domestic workers. It analyses the implications of the interviews to finally suggest that childcare should be provided in a way that recognises its potential as a s9(2) redress measure against gender inequality. Chapter six concludes this dissertation by drawing on the key points emerging from the research and the way in which they support the idea that the universal provision of childcare would enhance the achievement of substantive equality.

CHAPTER TWO

LITERATURE REVIEW

In this chapter I engage with the literature on the provision of childcare. This considers the model adopted by the state, wherein the educational development of the child is the focus of the approach taken in the Children's Amendment Act (the CAA). This is considered against a model of provision wherein the child's caregivers are also considered as beneficiaries of care services. I examine the ways in which the provision of childcare can be considered a rights issue within the bill of rights. The examination of childcare within a rights paradigm leads to a consideration of the South African law on the provision of social security, and some of the research conducted on the impact of the Child Support Grant (CSG). The discussion of this literature shows that while the CSG can help realise greater empowerment for mothers who receive it, it does not shift the burden of care born by women. Finally, I discuss the various studies about domestic workers by first outlining the description of the sector that has emerged over time. Then I examine the literature on organisation by domestic workers, and the subsequent state regulation of their conditions of employment. My description of the literature on domestic work concludes by detailing the existing knowledge on how domestic workers access childcare.

The specific issue of childcare is examined in my research because of its potential to practically transform the lives of domestic workers. The provision of childcare has been highlighted as having this potential because of the dual care burden that low-income women currently bear. International studies have shown that a woman's entry into income earning work does not decrease the amount of care work that they are required to perform in the home.³⁰ This care work – including child-rearing, cooking and cleaning – can impact on the amount of time women have for paid work. This sole burden of care that women in low-income employment bear impacts not only their ability to access employment, but also erodes a meaningful experience of

³⁰ Oxfam "Women's Economic Empowerment and Care: Baseline Research Report" (2015).

equality in their daily lives. Access to childcare has the potential to transform the lives of women in low-income employment (like domestic work) by providing a certainty with regards to available time, educational advancement for their children, and a shifting of the financial burden on to the state.

Theories informing the provision of Childcare

The concept of childcare can be broadly understood to cover all aspects relevant for child growth and development, including health, nutrition, education, and care amongst others.³¹ Childcare is also more narrowly understood as ‘the provision of facilities, whether home-based or outside of the home that accommodate the care and educational needs of pre-school children.’³² Often this approach to childcare will have a focus on Early Childhood Development (ECD). This approach considers childcare within a paradigm of the child’s educational development. This child-centred approach to care is the paradigm with which the state has regulated the provision of care in South Africa.

The provision of childcare is regulated by the CAA, which governs different care providers. The objectives of this Act mirror much of the content of s 28 of the Constitution. Section 2 of the Act includes the best interests of the child standard as an object of the act, as well as giving priority to the rights of children being realised within the family. This is noted as being linked to a paradigm shift in the Act, which is ‘to reduce state intervention into family relationships.’³³ Because of this objective of the Act, the primary responsibility for the provision of care rests within the family, with the state taking on a supportive role in situations where the family is unable to fully provide for a child. Chapter 6 of the Act regulates Early Childhood Development. The regulation of ECD centres is education focused, and

³¹ Debbie Budlender *WIEGO Child Care Initiative Institutional Mapping of Child Care Actors* (2015) South Africa, *WIEGO*.

³² Goldblatt op cit 24.

³³ Hester Bosman-Sadie & Lesley Corrie *A Practical Approach to the Children’s Act* (2010) at 15.

concerned with a child's social development. The justification for legislating such centres is to ensure that children are able to realise their full potential, and develop appropriately through the provision of the service.

The CAA places the regulation and growth of access to ECD centres with the Department of Social Development, which is required by s92 to 'include in the departmental strategy a comprehensive national strategy aimed at securing a properly resourced, co-ordinated and managed early childhood development system.' This empowering provision gave rise to the National Integrated Early Childhood Development Policy,³⁴ which is the state's commitment to realise children's rights to social services. The policy recognises that deficiencies in programme and the implementation thereof have resulted in ECD services not being available to all children. It notes an inequity of access that is impacted by geographic location, population group, and income.³⁵ The state does not commit to the universal provision of childcare, but rather limits its role (specifically with regard to the funding of centres) to the provision of services when parents or caregivers are unable to do so. The policy states that:

'a government resourcing strategy does not mean that all funds must be sourced from the public fiscus; it certainly allows for, and in fact requires, the allocation of resources by private entities and development partners. However, what it does mean is that Government is accountable for mobilising and directing the necessary funds to meet its early childhood development commitment and responsibilities.'³⁶

The way in which the state has provided funding to ECD centres is to pay a subsidy per child whose caregiver's income falls below a means tested level.³⁷ This means that state assistance is limited to children who come from the poorest households,³⁸ and is aimed at making sure that poverty does not

³⁴ Supra note 27.

³⁵ Ibid at 40.

³⁶ Ibid at 94.

³⁷ Eric Atmore 'Early Childhood Development in South Africa – Progress Since the End of Apartheid' (2013) 21 *International Journal of Early Years Education* at 158.

³⁸ Ibid at 158.

exclude children – rather than adopting an approach that favours widespread or more extensive access.

The CAA also introduces ‘partial care facilities’ in Chapter 5 of the Act which are described as being provided when: ‘a person... takes care of more than six children on behalf of their parents or care-givers during specified hours of the day or night.’³⁹ The regulation of partial care facilities is also noteworthy when considering access to childcare, as these care centres may serve to fill care gaps between school hours, and parents’ work hours. The Act has newly included this type of care regime because of:

‘the widespread use of partial care facilities due to the growing number of women in the workforce and the high proportion of single parent households. It is therefore a matter of public importance that appropriate care arrangements for children are made.’⁴⁰

This goal of state regulation of a service that is becoming increasingly available reflects changes in social care regimes. The inclusion of this provision in the Act shows recognition that the provision of care needs to meet specified standards in order ‘to ensure that children in partial care are accommodated in satisfactory facilities and that the persons in charge of these facilities are suitable for the role they play.’⁴¹ The facilities may also receive state funding should the MEC decide, with a focus on making funds available to children in poor communities.⁴²

The child-centred approach currently informs the state’s response to the provision of care. This form of social protection or service makes up a part of the way in which poor families are enabled to care for their children, with the Child Support Grant (CSG) being the other main state-sponsored social security mechanism provided for the facilitation of childcare. An alternative paradigm through which care can be understood is by considering

³⁹ Supra note 26 at Section 76.

⁴⁰ Bosman-Sadie & Corrie op cit 33 at 95.

⁴¹ Bosman-Sadie & Corrie op cit 33 at 96.

⁴² Supra note 26 at section 78.

the child's caregiver as a beneficiary of the service. A caregiver benefits from the provision of care in that they are relieved of the time they would normally need to dedicate to looking after a child, which they can then use in seeking or engaging in wage earning activity. They are also relieved from the monetary burden of paying for care. Domestic workers have access to a number of other, employment related forms of social security,⁴³ but childcare is not one of them. The consistent and universal provision of childcare would help improve their capacity to engage in income earning activity, while also ensuring that their children receive developmentally advantageous care.

As a part of their childcare initiative, Women in Informal Employment: Globalizing and Organising (WIEGO) produced a research report entitled: *Our children do not get the attention they deserve*.⁴⁴ This study was conducted with an acknowledgment of the fact that most of the previous research on how women access childcare as a means to engage in income-earning work has been conducted in the global north and that a difference exists in the way women in the global south experience this issue.⁴⁵ The study confirmed the already established finding that having to care for young children leads to segmentation of the labour market because women are required to choose lower-paid, more insecure and therefore more flexible work.⁴⁶ The research further found that having to care for young children could reduce the productivity of women by limiting or altering their work schedules.⁴⁷ The conclusion that Alferts draws is that:

‘addressing women’s disproportionate responsibility for unpaid care work is essential to improving their productivity at work and facilitating their economic empowerment.’⁴⁸

It is from this conclusion that the organisation advocates for the provision of care to women working in the informal economy.⁴⁹ The research helps show

⁴³ Department of Labour *Sectoral Determination 7: Domestic Worker Sector. Basic Conditions of Employment Act no. 75 2002.*

⁴⁴ Laura Alferts “*Our children do not get the attention they deserve*” (2016) Durban, WIEGO.

⁴⁵ Ibid at page 1.

⁴⁶ Ibid at page 23.

⁴⁷ Ibid at page 23.

⁴⁸ Ibid at page 23.

the differing experiences of women as a result of the care burden that they bear; establishing clearly the unequal way in which they perform income earning work.

Moussié draws on this research and advances in international law, to recommend that the UN Secretary General ‘extend quality holistic child care services, as part of social protection systems, to protect against work-related contingencies and amplify the benefits of cash transfers.’⁵⁰ Here childcare is seen to benefit the lives of women working in the informal economy, and is understood within the context of state funded protection programmes. Similarly, Goldblatt argues that the provision of childcare is ‘a human rights issue with important implications for gender equality and the transformation of gender relations in society.’⁵¹

A direct right to the provision of childcare is not present in the bill of rights, but Goldblatt identifies a number of rights where this issue can be located, including that of citizenship.⁵² The right to provision of childcare is shown to exist within section 28 of the Constitution, which protects the rights of children. She argues that because the section promises a right to basic social services, this could include the provision of childcare.⁵³ This is the approach taken by the state in the Children’s Amendment Act, although in a limited manner, because it only requires the state to prioritise funding for facilities in communities where families struggle to provide their children with the basic necessities of life.⁵⁴

Goldblatt explores various ways that an enforceable right to childcare could be constructed within the Constitutional text. Her focus on childcare

⁴⁹ Rachel Moussié *Child Care from the Perspective of Women in the Informal Economy* (2016) *UN Secretary-General’s High Level Panel on Women’s Economic Empowerment* at 1.

⁵⁰ Ibid at page 10.

⁵¹ Ibid at page 12.

⁵² Goldblatt op cit 24 at 121.

⁵³ Goldblatt op cit 24 at 121.

⁵⁴ Supra note 26 at Section 93.

comes from a commitment to the South African Constitutional project and its goals of transforming society. She writes that ‘without serious efforts to address the sexual division of labour and assist women with childcare responsibilities, full citizenship for all South Africans will remain elusive.’⁵⁵ Although her argument is focused on how the uneven burden of care placed on women limits their right to citizenship, her analysis provides a summary of the various Constitutional rights that could be used to understand the issue. Most importantly, she brings to the fore the argument that the provision of childcare is a rights issue not only for the child recipient, but for their caregiver as well.

The provision of childcare has in South Africa been located within the framework of advancing children’s rights, as Goldblatt observes, and the analysis of the legislation and state policy has shown. WIEGO has advanced the argument that the provision of childcare should form a social protection provided by the state, within the existing provision of cash-transfer grants and employment rights available to women.

Social Security in South Africa

Section 27 of the Constitution establishes that everyone has the right to ‘social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.’ Social security under this right is seen as broader than in traditional conceptions, as it includes ‘social assistance, social insurance and private savings.’⁵⁶ Although this conception of social security is broader, it is limited to the provision of cash-transfers where a person’s income is interrupted, terminated, or never materialises. The right to social security in the Constitution bears an internal limitation, requiring that the state adopt reasonable legislative and other measures for the progressive realisation of the right, within the state’s available

⁵⁵ Ibid at page 125.

⁵⁶ Leila Patel 'Poverty, Gender and Social Protection: Child Support Grants in Soweto, South Africa' (2012) 11 *Journal of Policy Practice* at 109.

resources.⁵⁷ This allows the state scope to develop the right over time – gradually increasing the funds made available. The right is not immediately available to everyone,⁵⁸ and the legal standard with which the state's conduct will be scrutinised is one of reasonableness.

The Constitutional framing of the right as providing social assistance in circumstances when the recipient is unable to, has informed the state's response in choosing to provide assistance based on income testing.⁵⁹ This focus of the South African system is interpreted by Olivier to pay 'little attention to the aims of prevention and integration'⁶⁰ that should form a part of the state's programme of social security. The compensation-focused approach of the state does not go towards addressing the causes of social insecurity that make cash-transfers necessary, rather it merely acts as a stop gap measure. A more comprehensive system of social protection would involve the provision of poverty and insecurity preventing measures – including the provision of childcare.⁶¹ The state's National Integrated Policy includes the objective of reducing poverty through improved education, and eventually employment, as a result of ECD services. This could be interpreted as delivering childcare in a way that fits it into a broader system of social protection. However, because of the limits of the policy it is not yet far reaching enough to serve as a social protection for mothers.

Patel, Hochfield & Moodley note that access to the CSG has improved the lives of women who access it, as they are able to exercise 'power and control over household decision-making in financial matters and general

⁵⁷ Supra note 3 at section 27(2).

⁵⁸ *Government of the Republic of South Africa v Grootboom* ZACC 19, 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC). The court decided in this case that the socio-economic rights in the Constitution do not create a minimum core entitlement to which the state can be held.

⁵⁹ Olivier & Jansen van Rensburg 'Perspectives on the Concept of Social Security' in Olivier M et al (eds) *The Extension of Social Security Protection in South Africa* (2001) at 24.

⁶⁰ MP Olivier 'The Concept of Social Security' in Olivier M, Smit N & Kalula E (eds) *Social Security: A Legal Analysis* (2003) at 32.

⁶¹ There is no clear definition of social security within the literature, but it is often considered to be a more narrow concept than that of social protection.

household spending.⁶² This is seen to improve the lives of their research participants because access to the grant 'enabled them to generate outcomes they considered important for the quality of their lives and their children's well-being.'⁶³ This is a crucial finding on the ability of state-supplied social assistance to materially impact women's experience of equality. The authors go on to find that the 'unequal distribution of care burdens between men and women in the private domain ... increases gender inequality and curtails the ability of CSG beneficiaries to engage in activities (such as earning income) outside the home.'⁶⁴ From this finding the authors recommend that in order to further advance the programme of gender equality more should be done than the provision of cash-transfers. They conclude that while social programmes are valuable, they cannot overcome issues of gender inequality and improving the status of women on their own, rather 'they need to work in concert with other public policies and social programmes to promote both social transformation and child well-being.'⁶⁵ One such solution that is highlighted in the study is by providing care facilities to women, and as a result lessening the burden that they bear. This study highlights the utility and power of the CSG, but that it should also be a part of a more developed system of state measures aimed at improving the lives of women.

Ally considered access to the CSG in the specific context of domestic workers. She describes it as 'a child-centred policy, rather than one targeting care or the provider of it.'⁶⁶ When it came to the domestic workers she interviewed, she found that its implementation 'did nothing to disrupt the pattern of feminised familial responsibility and the provision of care.'⁶⁷ According to Ally, this means that by retaining the focus on the child, the content of their caregivers' experience is not improved or altered, because

⁶² Leila Patel, Tessa Hochfeld, & Jacqueline Moodley, 'Gender and Child Sensitive Social Protection in South Africa' (2013) 30 *Development Southern Africa* at 79.

⁶³ Ibid at 80.

⁶⁴ Ibid at 80.

⁶⁵ Ibid at 80.

⁶⁶ Ally op cit 22 at 141.

⁶⁷ Ally op cit 22 at 140.

they still bear the full responsibility for ensuring that the child is cared for with the small assistance from the state. They still need to work in domestic service in order to sustain themselves and their children, whilst needing to find someone to look after their children when they are at work. Instead of the state removing the burden of care from women, it simply chips in to the costs associated:

‘the CSG reinforces the structural location of female family providers of informal care by providing some measure of financial relief for their extraneous economic afflictions but not targeting their actual responsibility for care.’⁶⁸

While Patel et al showed that access to the CSG did improve the lives of women by increasing their agency when it came to spending, Ally’s analysis of the CSG in the context of domestic workers shows that much more is still needed.⁶⁹ The provision of childcare through the CAA and the National Policy may start to improve access to childcare within a broader social protection paradigm – but as of yet state support is limited to subsidies for children whose parents satisfy the means test – rather than supporting and developing centres to improve access.

General Literature on Domestic Workers in South Africa

The seminal text on domestic workers in South Africa is Jacklyn Cock’s *Maids and Madams*.⁷⁰ This study was published in 1980, and considers a variety of issues surrounding domestic workers in South Africa during apartheid. In the preface Cock states the purpose of the study as an attempt at giving ‘a tentative and exploratory account of an institution which has been an essential part of the white South African way of life for generations.’⁷¹ The theoretical lens from which her research was conducted, and the theory described, is an intersectional approach to the oppression her subjects experienced due to the convergence of their race, gender and class.

⁶⁸ Ally op cit 22 at 141.

⁶⁹ Ally op cit 22 at 138.

⁷⁰ Cock op cit 8.

⁷¹ Cock op cit 8 at 1.

She writes that ‘in South Africa racial and sexual hierarchies fuse to create the concentration of black women in domestic work.’⁷² She considers how white women are able to escape the oppressions of household maintenance by hiring black women to reproduce the home.⁷³ The white South African housewives were then able to take up employment. The spatial segregation and job reservation that characterised the apartheid state meant that they could employ black women at extremely low wages and in exploitative conditions – such as long hours of work with little or no time off.⁷⁴ This would be coupled with degrading personal interactions between employers and employees in the home. She writes that ‘domestic work is a microcosm of the existing pattern of inequality in South Africa, and contributes to these inequalities in important ways.’⁷⁵ Her study explained the specific exploitation existing around domestic workers in an explicitly racist society, and established the benchmark against which any later transformation in the sector can be judged.

In 2000 to 2001, Fish undertook a large study of a number of domestic workers and employers in the Cape Town area, published as ‘Domestic Democracy: At Home in South Africa’, in which she explores the shifts since Cock’s study and the advent of democracy.⁷⁶ She finds that domestic workers continue to reproduce the household on a daily basis, both for white employers and the “newly elite” black employers that now make up some of the sector.⁷⁷ The central argument of her book is that ‘domestic work plays a critical role in South Africa’s transition because the institution manifests the enormous contradictions between a new democracy and the last vestige of apartheid.’⁷⁸ This thesis rests on the assertion that ‘the employment of

⁷² Cock op cit 8 at 252.

⁷³ Cock op cit 8 at 52.

⁷⁴ Cock op cit 8 at 52.

⁷⁵ Cock op cit 8 at 307. It was seen to contribute to the existing inequalities by reproducing racist attitudes within the households where domestic workers were employed.

⁷⁶ Fish op cit 9.

⁷⁷ Fish op cit 9 at 2.

⁷⁸ Fish op cit 9 at 2.

domestic workers in modern South Africa virtually mirrors its practice in the apartheid era.⁷⁹

Fish's research reveals that the content of domestic work has changed little in the intervening 20 years, and that women are still expected to clean homes in the most intimate of ways, often being required to cook for the family, take care of their employers' children, and wash underwear. This is despite the protections introduced by the state after the democratic transition. She writes that 'even though the law mandates protection, domestic workers realise few benefits in their actual work contexts.'⁸⁰ The on-going viability of the institution of domestic work is attributed to continuing problems of inequality that have not been overcome since the 1994 transition.⁸¹ Here she writes that women become trapped in domestic employment because the severely limited educational opportunities allowed during the apartheid era continue to make 'workers feel like they have no other options.'⁸²

Fish's study focused on women employed as domestic workers before and after the democratic transition, in order to collect data of the change in experiences. Her research:

'demonstrates that domestic work remains a powerful institution that situates social hierarchy, constructs severe power differentials among women based on intersections of identity, and illustrates the barriers to actualising democracy in the private sphere.'⁸³

The centuries old institution of domestic work in South Africa makes up part of the fabric of inequality and change that occurs in the light or the shadow of the Constitution.

Ally's work examines the ways in which the democratic state has legislated and regulated the institution of domestic work, to transform it from one of servitude characterised by a lack of legal protection and

⁷⁹ Fish op cit 9 at 6.

⁸⁰ Fish op cit 9 at 42.

⁸¹ Fish op cit 9 at 3.

⁸² Fish op cit 9 at 83.

⁸³ Ally op cit 22 at 178.

marginalisation to one where employees in this sector are properly recognised as workers.⁸⁴ This analysis considers the impact or lack thereof of the regulation on domestic workers. Her focus in the process of collecting and analysing data was to scrutinise the manifestation of power, specifically between the state and the employee.⁸⁵ She discovered through the interview process that ‘the state’s practice of power in the sector has threatened their own, issuing from the intimate nature of their work.’⁸⁶ This nuanced study considers how important the creation of rights has been, as well as the flaws in the nature of these rights.

Sectoral Organisation and Regulation

From the original position as completely unregulated and unprotected at the time of transition in 1994, domestic workers are now well covered by state regulation. The Domestic Worker Sectoral Determination of 2001 regulates their conditions of employment and sets the minimum wage for the industry.⁸⁷ They have the right to unionise under the Labour Relations Act⁸⁸ (and the Constitution). They are included under the protection of the Basic Conditions of Employment Act,⁸⁹ which provides for paid vacation and maternity leave – as well as protecting workers from summary dismissal.⁹⁰ Ally notes that one of the greatest changes that state regulation has brought about is the dignity that comes from work security.⁹¹ Employers are now legally prevented from capriciously dismissing domestic workers – a practice that was commonly observed under apartheid. Domestic workers have also been included in the Unemployment Insurance Act,⁹² which provides support should they lose their position, or require short term financial support.

⁸⁴ Ally op cit 22 at 3.

⁸⁵ Ally op cit 22 at 12.

⁸⁶ Ally op cit 22 at 13.

⁸⁷ Department of Labour *Sectoral Determination 7: Domestic Worker Sector. Basic Conditions of Employment Act no. 75 2002*

⁸⁸ 66 of 1996.

⁸⁹ 75 of 1997.

⁹⁰ Section 20 regulates annual leave, section 25 maternity leave. Chapter 5 of the Act regulates the termination of employment.

⁹¹ Ally op cit 22.

⁹² 63 of 2001.

Fish describes the successful campaign by the South African Domestic Service and Allied Workers Union (SADSAWU) to have domestic workers included in the legislation regulating the unemployment insurance fund in the early 2000s, in her article *Domestic Labour and Coalition-Building in South Africa*.⁹³ Fish used her qualitative research into the lives of domestic workers and their experiences of democracy as the backdrop for her description of the shift garnered through the effective use of unionisation. She quotes one of her participants as saying: “When domestic workers realise democracy in their everyday lives, then we will know that South Africa has fully transformed.”⁹⁴ Her work highlights the fact that at the time of the study ‘the institution of domestic labour present[ed] one of the most serious challenges to notions of a shared gender experience among women.’⁹⁵ This is an idea that the author derived from Cock’s book, but which her research shows has not changed in the intervening twenty-year period.

Dinkleman and Ranchhod consider the impact of legislative intervention into the domestic work sector in the immediate aftermath of government regulation.⁹⁶ Their core findings were that there was an ‘immediate, large and partial adjustment of wages upwards in the wake of the law’⁹⁷ and that they found ‘no significant effects on the intensive or extensive margins of work.’⁹⁸ The study further finds ‘dramatic increases in the fraction of domestic workers who have formal contracts of employment, after the law.’⁹⁹ The limitation of the study is rooted in the change over time that is possible in the sector. The authors note that ‘our analysis is only relevant for the short-run effects of a new minimum wage policy:...the wage earnings and

⁹³ Jennifer Fish ‘Engendering Democracy: Domestic Labour and Coalition-Building in South Africa’ (2006) 32 *Journal of Southern African Studies*.

⁹⁴ Ibid at page 127.

⁹⁵ Ibid at page 112.

⁹⁶ Taryn Dinkelman & Vimal Ranchhod ‘Evidence of Impact of Minimum Wage Laws in an Informal Sector: Domestic Workers in South Africa’ (2012) 99 *Journal of Development Economics* 27.

⁹⁷ Ibid at page 28.

⁹⁸ Ibid at page 28.

⁹⁹ Ibid at page 28.

employment effects of the policy may change as the sector becomes more formal over time.¹⁰⁰ It is possible that the introduction of formal sector regulation may have created changes in access to childcare for domestic workers.

Fish also explores some of the changes that have occurred in the employment of women as domestic workers, including the increasing occurrence of women being employed as part time 'chars.'¹⁰¹ This situation has very specific implications, as it limits the efficacy of the state interventions into the sector. Fish writes that 'this increased casualisation of domestic labour allows employers to circumvent protection when they hire workers on a part-time "contract" basis.'¹⁰² This limitation is based on the fact that each domestic worker is employed part-time by a number of employers, none of whom need to conform to the standards in the Basic Conditions of Employment Act.¹⁰³ When it comes to state interventions into the sector, 'power and privilege facilitate a normalcy about employers' ignorance in relations to employment standards mandated in the new labour legislation.'¹⁰⁴ What this means is that although domestic work is officially recognised by the state and its interventions into the sector, the intimate relationship between employee and employer consistently works to confound these interventions. Fish observed some of the opinions of participants in the attempts by the state to intervene to prevent the exploitation that characterised the sector. She notes that 'failed *delivery* of impressive human rights orientated policies remained one of the widest concerns pertaining to transformation.'¹⁰⁵

However, Ally notes that in spite of robust state regulation into the previously exploitative domestic service, that 'they remain a cheap reproductive labour force in a continuingly race- and gender-segmented

¹⁰⁰ Ibid at page 42.

¹⁰¹ Fish op cit 9 at 194.

¹⁰² Fish op cit 9 at 195.

¹⁰³ Fish op cit 9 at 194.

¹⁰⁴ Fish op cit 9 at 196.

¹⁰⁵ Fish op cit 9 at 192.

domestic labour market.¹⁰⁶ The implication is that state intervention into the sector is not enough to change the experiences of women employed as domestic workers. It is not enough to provide formal rights and protections, when the nature of the sector is one that inherently protects and perpetuates inequality. Intervention needs to be aimed at the circumstances that reproduce the institution – such as the constraints created by a need to access childcare.

Access to Childcare in the Literature

Within the extensive portrait Cock created of domestic workers, the issue of childcare forms one of the features. Of the women interviewed in-depth, all of them were mothers. Cock's findings based on the interviews were that:

‘all these domestic workers are mothers, some with very young and some with school-going children. All hate to leave their children alone during the day or in the care of others, but they are forced to do so either because they have no other source of income, or because their husbands do not earn enough to maintain their families.’¹⁰⁷

It is in this quote that the import of access to childcare for domestic workers is located. Mothers employed as domestic workers have a need for childcare because their employment takes them away from their children. Cock also describes that ‘the tension between the domestic worker's role of mother and wage-earner are aggravated by the fact that blacks are in the worst position as regards the provision of day-care facilities for the pre-school child.’¹⁰⁸ This position came about because of the poor quality education provided to black children by the state.¹⁰⁹ Ultimately the concern with regards to domestic work is that the women Cock studied ‘are driven into domestic employment in order to support their dependents, and then have to neglect their families in the process.’¹¹⁰ This was a cruel irony observed in the lives of Cock's participants, who were employed to provide high quality care to the children

¹⁰⁶ Ally op cit 22 at 184.

¹⁰⁷ Cock op cit 8 at 53.

¹⁰⁸ Cock op cit 8 at 54.

¹⁰⁹ Black Education Act no 47 of 1953.

¹¹⁰ Cock op cit 8 at 85.

of their employers, while their children could not expect to benefit in the same way. When it came to the provision of childcare, Cock observed the solutions that her participants made use of as most often involving having another person look after the child.¹¹¹ In most cases, this person was another female relative, and sometimes it would be a neighbour. A small number of the participants reported that they made use of a crèche. Cock went on to note that 'anxiety was expressed not only by the mother of pre-school children, but also those mothers whose children were already of school going age.'¹¹² This anxiety was caused by the fact that the mothers often did not know what their children were doing after school, before they themselves came home from work.¹¹³

Ally investigated the ways in which domestic workers accessed childcare, and how the macro level state intervention merely perpetuated the conditions of domestic work. She writes that 'in South Africa, domestics' spatial and employment configurations conditioned their caregiving capacities and the extent to which they bore responsibility for caregiving themselves or were forced to displace it along the chain to other family providers.'¹¹⁴ The factors she identified as impacting the manner in which her interviewees accessed childcare had to do with whether they lived in at work, were full time or part time. It also depended on whether they had family members with which they could leave their children in rural areas, or if their children lived with them. Only one participant had access to an affordable childcare centre, with the rest having to rely on neighbours or older children. Ally diagnoses the cause of how domestic workers access care as being a result of 'the social welfare policy of the post-apartheid state, which does not socialise the responsibility for care but instead reinforces, for poor women, its privatisation within families.'¹¹⁵

¹¹¹ Cock op cit 8 at 54.

¹¹² Cock op cit 8 at 54.

¹¹³ Cock op cit 8 at 54.

¹¹⁴ Ally op cit 22 at 134.

¹¹⁵ Ally op cit 22 at 138.

Having considered the transformative potential of the provision of childcare to women, the potential of a reduced care burden and increased ability to participate in income earning work are benefits that could directly improve the lives of domestic workers. Currently the only state sponsored benefit that they can access is the CSG, which can make a positive contribution into their empowerment, but does not displace the care burden they are faced with. The literature on their access to childcare also demonstrates a limited ability to find care solutions outside of interpersonal relationships. This position in the literature informs the research I conducted when examining the experiences of domestic workers and the potential for change that the provision of childcare offers.

CHAPTER THREE

METHODOLOGY AND ANALYTICAL APPROACH

The nature of my question, which seeks to interrogate the experiences of women working as domestic workers, necessitates the use of specific research methodologies. Hesse-Biber describes the research logic of qualitative methods as ‘one that privileges subjective experience and that is open to a multi-layered view of the world.’¹¹⁶ My question required a qualitative methodology because the experience of the individual was the crucial enquiry I undertook. The project of investigating the lives of mothers employed as domestic workers is one that sought to contribute to the existing narrative in the literature. A qualitative methodology was appropriate for this kind of enquiry because it is ‘a particularly sensitive means of capturing the lived experiences of groups and individuals, especially those left out of traditional knowledge-building research projects.’¹¹⁷

I approached this qualitative enquiry from a feminist perspective. A feminist research perspective accepts that a researcher cannot act without bias, because ‘knowledge is imbued with the power and authority of those who have it.’¹¹⁸ This pays heed to the multiple forms of oppression that are present in any research situation – including race, class, gender, and level of education. The research methodology used in my study had to recognise the intersection of race, class and gender in the lives of interviewees in order to combat any potential for reproducing cycles of oppression. It also needed to account for the differences between researcher and interviewee, and the kind of power dynamic that existed between us during the research.¹¹⁹ Hesse-Biber writes that because a feminist methodology realises ‘that not all women are the same, there is a particular interest in how race, class, sexual orientation, and other differences intersect to impact specific women’s

¹¹⁶ Sharlene Hesse-Biber, *Mixed Methods Research: Merging Theory with Practice* (2010) at page 9.

¹¹⁷ Ibid at page 17.

¹¹⁸ Ibid at page 18.

¹¹⁹ Ibid.

lives.’¹²⁰ She also describes a feminist methodology as being ‘mindful of the ways in which power and authority influence the research process.’¹²¹ This awareness of intersectionality and power that is brought to research through a feminist methodology underlaid the whole research process which I followed.

Sample

For the purpose of this research I conducted eight one on one interviews with women who are employed as domestic workers and have children.¹²² My sampling was purposive, as the study relies on a specific gender and job. Although the focus of the study is on domestic workers, one of the interviews was with an ECD practitioner who lives in Gugulethu. She provided some information on crèches specifically, and as a point of contrast to the other participants because of the childcare solutions her children were able to make use of. Four of the participants were interviewed about their grandchildren, and although not all of them were directly responsible for raising them, they still provided towards their care and upbringing.

In addition, the sample focused on women who currently have children under the age of nine years old.¹²³ The focus on children younger than nine was so that I could find out information on how this group is cared for. Although my focus is on the issue of children not old enough to go to school, there are sufficient similarities between children younger than school going age and those who have recently started school. While they are in school for a portion of the day, they might finish before their mothers get home from work, and they are still too young to be considered able to care for themselves. In addition, younger children have only recently entered the school system, and so the experiences of care up to the school going age

¹²⁰ Ibid at page 20.

¹²¹ Ibid at page 20.

¹²² In my research design, I sought to complete around ten interviews. Time and access turned out to limit my ability to complete this number of interviews.

¹²³ Based on the definition in The Children’s Amendment Act.

are still fresh. As a result my sampling was not strict with regards to the ages of children, as there are various issues that are relevant to my question.

I approached my interviewees using a number of different avenues. I initially conducted interviews with women who were recommended to me by a fellow academic, and acquaintances that I was in conversation with about my research. I then accessed the rest of my sample through the use of a gatekeeper, who had connections with various organisations to which domestic workers belong. The decision to make use of multiple avenues was one based on pragmatism and principle. It was easier to cover a number of interviews in a short time through multiple access points. In addition, by having various pathways to make contact, I hoped to avoid having a partisan sample.

Methods

The method I used for collecting data on the experiences of women working as domestic workers is the qualitative interview. Patton states that 'qualitative interviewing begins with the assumption that the perspective of others is meaningful, knowable and able to be made explicit.'¹²⁴ This conforms to a feminist methodology that has the experience of the research subject at the core of the research. A qualitative interview allowed me, as the researcher, to observe feelings and thoughts which I could not research merely through observation.¹²⁵

In conducting interviews I used the open-ended interview style described by Patton.¹²⁶ This approach makes use of a structured interview schedule, which helps to ensure that each person interviewed gets asked the same questions in the same order, producing data that is comparable.¹²⁷

¹²⁴ Michael Patton 'Qualitative Interviewing' in *Qualitative Research & Evaluation Methods* 3 ed (2002) at page 341.

¹²⁵ Ibid.

¹²⁶ Ibid at page 344.

¹²⁷ Ibid at page 345.

Each question is fully worded before the interview.¹²⁸ The schedule I used is attached as annexure A. By having a one on one conversation I aimed to have more control of the process of enquiry. Morgan identifies as a benefit of individual interviews that the dynamics 'put more of a burden on the informants to explain themselves to the interviewer so that the elaboration of initial statements often occurs with relatively little input from the interviewer.'¹²⁹ Although the questions were more structured, they still retained a discursive nature so that I could explore issues raised during the course of the interview. The inclusion of this line of enquiry allowed me reflexivity to what the interviewee raised during the interview and to bring to my attention issues that I may not have been aware of initially.

This style is identified as useful in situations where 'it may only be possible to interview participants once for a short, fixed time ... so highly focused questions serve to establish priorities for the interview.'¹³⁰ As my research focused on women working as domestic workers, it was important that my interviews not take up many hours that these women do not have. It was important that the interviews not take the participants away from their workday for too long, when I was able to interview them at their workplace. Similarly when the interviews took place on the weekend I did not want to consume too much of their time that they would be spending with their children or caring for their homes. For this reason the interview schedule I used was brief in design with some questions only requiring a brief answer, while others allowed for more discussion if the participant wished. I also built in the expectation that the interview would only last between 15 and 20 minutes in the consent form which I discussed with the interviewees before we began.

¹²⁸ Ibid at page 344.

¹²⁹ David Morgan, *Focus Groups as Qualitative Research* Qualitative Research Method Series 2nd ed (1997) at 11.

¹³⁰ Patton op cit note 124 at page 346.

After expressing my gratitude, I began the interview process by letting the interviewee know that they could choose to have their identity be kept out of my research. I let the participant know that they could decide on this matter at the end of the interview – based on how they felt after our discussion. This information was also included in the informed consent form. I asked the interviewee if she was comfortable with me recording the interview. If the interviewee was comfortable with a recording, I used my cell phone to make a voice recording of the session. This was the ideal situation, as a voice recording allowed me to go back and re-examine the conversation from an external position.¹³¹ If the interviewee was not comfortable with a voice recording I only took notes during the interview. This allowed me to collect answers to the questions, although I lost some of the nuance and emotion.¹³²

Research sites

I collected data from women working in the Western Cape, specifically Cape Town. Cape Town was the primary site for my research, as I was located there for the duration of my masters research. This was an important consideration, as I did not have access to resources to investigate any site in the country. While my ability to conduct research was an important factor, there is a social justification for considering Cape Town. It is an economic hub in the country that has experienced a substantial amount of development both during apartheid, and since the establishment of a Constitutional democracy in 1994. As a result there is a lot of wealth and industry in Cape Town, as well as noticeable income inequality. For these reasons Cape Town was both a feasible and important research site.

Once I made contact with my participants and they agreed to participate in the study I travelled to them in order to conduct the interviews. When it came to conducting the interviews, I allowed the participant to decide

¹³¹ Patton op cit note 124 at page 380.

¹³² Patton op cit note 124 at page 381.

what the most convenient location for them was. This required me to interview them at their place of employment, at their homes, or in a public space such as a coffee shop.

Analytical strategy

After I had completed the interviews the first step I took was to conduct a post-interview review.¹³³ This gave me the opportunity to get down the contextual information surrounding the interview that I drew on later. Patton describes the period after an interview as 'a critical time of reflection and elaboration.'¹³⁴ The reflection at the end of the interview brought me to consider what aspects of the interview schedule was not working, what needed to be explained differently, and for personal self-reflection.

The next step was for me to transcribe the interviews from recordings made. I then went back to the focus of my research to draw out key concepts that I needed to look for in the transcripts. This allowed me to code the interviews. Once I coded the interviews with core themes or phrases, I looked to establishing common and contrasting elements from the interviews.

Ethical considerations

For my research to comply with ethical requirements I had to ensure that each participant gave informed consent. This required that I state the purpose of my research before the interview began, as well as explaining the voluntary nature of the process.¹³⁵ These elements were incorporated into the consent form in annexure B. The interviewee needed to feel comfortable dropping out at any point. Because I had travelled to meet with the interviewee I hoped that they felt comfortable revoking consent, as there was no material cost to them.

¹³³ Patton op cit note 124 at page 384.

¹³⁴ Patton op cit note 124 at page 384.

¹³⁵ Patton op cit note 124 at page 407.

Patton notes that the dominant perspective on confidentiality is that participants should always have their identity protected. However, this 'is being challenged by participants in research who insist on "owning their own stories."' ¹³⁶ It is important to me that the decision of the participant is respected, and that they get to decide how their story is told. As a researcher, I am borrowing from their lives, and for this to be ethical it is important that they are able to specify the parameters of how they are described. Because of this, I allowed my participants to decide if they would like to remain anonymous at the start of the interview. I also explained that they could decide at any point if they would prefer to have their identity concealed in the way in which the data is written up. Here I asked them to choose a pseudonym for the purposes of my writing. This pseudonym was then used to label all of the data collected from that participant. I included confidentiality by default into the structure of my research. As I transcribed all the interviews myself, no other person had access to the raw data. The transcripts and audio files all bear the chosen pseudonyms.

An important part of my research methodology, and later analysis of the data, is a scrutinisation and understanding of my position as a researcher because of my identity in the South African context. As a middle class, white female I represent the group that is historically and currently responsible for the oppression of women working as domestic workers. ¹³⁷ This dynamic could not be left at the door when the interview began; it naturally infused the interview and the nature of the information shared with me. In order to combat this problem, I tried to address it at the start of the interview with the participant. I also worked to remain conscious of it at all times, to avoid slipping into oppressive patterns.

¹³⁶ Patton op cit note 124 at page 411.

¹³⁷ Cock op cit note 8.

Patton notes a concern that ‘interviewees can be endangered by insensitive and inappropriate questions, so can naïve interviewers.’¹³⁸ Although my research is broadly focused on a state intervention, there was scope within the interview schedule to enquire into their current employment. This type of questioning or information provided could have threatened the interviewees’ work environment. On this note, the option to have the research written in a confidential way became important. In addition, when conducting interviews, I needed to make sure that the interviewee was able to speak freely, and this meant having the interview in as private a space as possible. When I came to know a participant through their employer, I made sure that their employer knew the content of my research so that the work relationship would not be impacted by the interview. I had prepared an information sheet for employers to address this point, although it did not end up being necessary.

Limitations

As the study I conducted is based on a set of qualitative interviews, the data that emerges cannot be generalised as experiences of women across the country. The focus on individual narratives in the research design means that my inability to generalise is compensated by the individual depth that was gained from this method. My lack of experience in conducting field research also acted as a limitation. My first few interviews were not as successful as the later interviews. I had not yet had practice in steering conversations consciously in a way to elicit specific data, while still honouring the person I was working with. The best way to deal with this limitation was through practice. It was important that I tested out my interview schedule several times so that I could get used to the flow of questions, as well as to make sure they were understandable to other people generally. I piloted the interview with experienced interviewers before I started my research process as a means of obtaining practical experience.

¹³⁸ Patton op cit note 124 at page 393.

The data collected during the course of the interview was likely to have been limited in content because of my identity. As my positionality is that of a member of the oppressive group, the information shared with me would be different to that which might have been shared with a black female researcher. Although I interviewed people who live and work in my home country, it would be naïve and additionally oppressive for me to imagine that we are all women together, or all South Africans together. My lived experience is vastly different to that of the women interviewed, as a direct consequence of the systems of oppression that determine our lived experiences.¹³⁹ There was no sure way for me to prevent this from happening, and I could only use my awareness of this problem to try and minimise its occurrence.

The limitations of identity also manifested during the research process through the more obvious language barrier that existed between the interviewees and myself.¹⁴⁰ I tried to avoid this limitation by working with participants who were willing to conduct the interview in English. However, I conducted the interviews in my home language, which was the participant's second language. The interviewees' comfort with English may have impacted their willingness or ability to share with me. I could only address the language and cultural differences that formed a part of the interviews by using the techniques of recording and transcription to make sure that I drew out the important detail of the interview. Reviewing the interviews allowed me to see the content and ideas that I missed in the initial interview. This means of addressing the limitation also puts the burden of crossing the cultural divide on me as the researcher, instead of requiring the interviewee to do the difficult work.

¹³⁹ Riessman describes the limitations she experienced in the process of conducting an interview across ethnic and class barriers and found that: 'such barriers to understanding are particularly consequential, for they reproduce within the scientific enterprise class and cultural divisions among women that feminists have tried hard to diminish.'

¹⁴⁰ Patton notes that 'the data from interviews are words. It is tricky enough to be sure what a person means when using a common language, but words can take on a very different meaning in other cultures.'

CHAPTER FOUR

FINDINGS

In this chapter I describe the lessons that came from my eight interviews across six themes. First, I examine the practical ways in which my participants have found access to care facilities for their children or dependents. I then describe the nature of the participants' workday as it relates to their time usage, and any additional provision of care that they may provide to their employers' children. I next consider the theme of education and the ways in which my participants discussed it both practically and as a tool to secure a brighter future. This theme turned out to be woven together with that of unemployment, which I observed as having a noticeable impact on their care solutions, as well as informing their choices for their lives and those of their dependents. I then move to lay out a typical workday, as it demonstrates the way that their income-earning activity interacts with parenthood. Finally, I highlight other socio-economic factors that I identified as having an observable relevance to the experiences of my participants.

Solutions Used

As far as domestic workers are concerned, there seemed to be a consistent solution to the issue of childcare – all of the children that were considered in my research went to crèche as a part of their care regime while their mothers were at work. At the time of interview, some of the children had started school, but were still young enough to have additional care requirements. What was not consistent was the type or nature of the crèche. Precious made use of a crèche close to her employer's home because she found it to be better than the one in the township where she lives.¹⁴¹ She mentioned that of her two young sons, the one that was in crèche close to work was learning a lot, compared to the previous crèches she had used closer to where she lives. She commented on the township crèches that 'I

¹⁴¹ The participants regularly referred to the townships in which they live as 'the location.' Both 'township' and 'location' refer to the underdeveloped areas outside of central Cape Town.

don't like them because they don't look after the children very well.' When discussing the quality of education in the crèches in the townships, Sylvia (the ECD practitioner) expressed concern with the quality of education offered at the Educare centres.¹⁴² She described the situation as follows: 'They've got the Educare class, they've got the pre- Educare and grade Rs. They're concentrated on the grade Rs, whereas the two year and the three year they also need to be taught.' Sylvia's concerns matched to the experience that Nolulamo had as her grandson moved from Educare to grade R. On this she mentioned that the 'teacher is saying "Ai Buhle he don't know nothing"' – but, since he's been in school for about six months 'now, since he's going to school now. But the teacher say, it's better than before.' Although she noted the struggle her grandson experienced when going from crèche to grade R, she did not attribute it to the quality of instruction at Educare, but rather to the fact that he may have been negatively impacted by the death of his mother. Her comments on the quality of the crèche were positive, saying 'they learn mos to the crèche. The teachers, the teachers there they show. They teach them.' However, this difficulty in the transition between Educare and grade R seems to confirm the difference in standard identified by Sylvia. Aishar also expressed contentment with the quality of education offered at the crèche that her 3-year-old son attends close to their home.

In many of the instances where a grandmother became responsible for the care of their grandchildren after the death of a parent, or when there was partial responsibility because of a maintained shared home, the difference in quality of education was noted between the crèches in townships, and those that were further afield in more affluent suburbs, similar to the opinion held by Precious. Kholiswa mentioned that before her grandson came to live with her and go to school in the township in which she lived, he had gone to a crèche in Mitchells Plain. She said that 'now he speak

¹⁴² The participants in the study referred to crèches attached to schools as 'Educare centres.' These crèche facilities provide care with an educational component.

English there now, but now he speak Xhosa. I'm worried about [him losing] lose the English.' Sylvia, although not a domestic worker, highlighted this issue with the choices over crèche made with regards to her grandchildren. Her two grandchildren attend crèche away from home in Gugulethu – one in Athlone and one in Pinelands. When asked about the decision to send them to crèches so far away she said:

'Their mother, the one's mother decided, "No I don't want my child to have the same education I had, at least my child must get a better education," compared to hers. Because all my children their crèches were here in the location.'

Nontutuzelo, who helps support the child of her unemployed dependent, was not responsible for the payment of her granddaughter's crèche –rather her father provided for this. Her father paid for her to attend a Muslim crèche in Gugulethu, with which she seemed to be satisfied.

Dorothy was the only mother whose children attended school and crèche outside of South Africa – having been sent to her mother-in-law in Malawi. They attend a private school and crèche in her home country, which she felt to be better than the state education offered in Malawi. However, she thought that they might receive an even better education in South Africa, and her decision to send them home was based on their safety.

While there was considerable overlap between the mothers' workday, and the care provided by the crèches, there was often still a need for assistance between when the children left crèche, and when their mothers got home. The most common solution to this gap in time where their children needed care was to make use of surrounding family members. The other option was to pay a person to provide supervision for this period. An interesting example of this was the solution Precious used for the care of her infant son. She paid a young woman who was looking for employment in Cape Town to provide individual care to her infant son, so that he wouldn't have to attend crèche. She explained that:

'my child is difficult, different because I'm breastfeeding him and then he wasn't used to drink the milk from the bottle. So at crèche they so

busy, to look after one child that is not drinking properly from the bottle, so I had to find the person that will look after my child, only one child there. So she can focus on him only.'

In order to have the best solution, this caregiver lives in with Precious, and fills the care gap created by the workday and problems of transportation. To this Precious said:

'it makes me easier to that I have somebody at home looking after my child. So like, when I'm late, cause the taxi sometimes takes long to get full, so then you get home late. So at least somebody is there to watch my child until I get there.'

Another method in which childcare was found to be outsourced for payment was in the afterschool programme offered by Sylvia. She describes this as follows: 'At 4 o'clock then I'm getting my aftercare, students I'm helping because I've got six learners that I help ne. After school they come to my house, and do their work. They do their homework, just I assist them with their homework.' This she does with students that are slightly older, although still in primary school. They come to her house after school, 'cause their mothers at that time are still at work – I keep them going. Their homework. So that when their moms come back from work, tired from work, she doesn't have to go back to the school books.'

Kholiswa and Nolulamo both live with their adult sons, who assist in looking after their nephews while Kholiswa and Nolulamo are at work. Kholiswa described the ways in which her son helped provide care to his nephew, Alakhe, saying 'my son, he always try to help me. Like if he's sick, my son take him to the doctor, neh. Sometimes he's got a meeting at the school, I can't make a time to go there, to make the meeting at the school.' In this way her son helps bear some of the care burden, meaning that Kholiswa is not required to miss work. Nolulamo described the help she receives from her son as follows:

'When I'm here at work, it's my son, he's not working. So I say, "you must look after him, you must give" – because they are cooking during the day. Or else, if they didn't cook, they make bread, and then they put something the bread.'

Andiswa described how, before her mother passed away in 2015, her child was 'then with her granny, and then she was responsible for it whether I'm already at work, she will take care of her, she will dress her, and then she can go to school.' Andiswa is still able to gather assistance from family in filling the extra hours between when her daughter finishes school and when she gets home from work, 'now I'm living with my younger sister, she's the one taking care of her when I'm not home, I'm at work. Because she's still not working.' She went on to say that 'it's just a normal routine, she will go to school, she will come home, there's someone there at home, because my sister, she's not working right now.' In line with this trend, Dorothy's mother-in-law provides additional care from the time the children return from school and crèche, and in this way they are not unattended in the afternoon.

Conditions of Employment

The nature of employment of the participants interviewed is fairly uniform with regards to the day to day. The participants did not discuss in detail the content of their days at work, and it was only in cases where part of their employment involved helping with their employer's children that they described some of the content of their day. For example, Kholiswa described her afternoons, in addition to cleaning as:

'sometimes if Leila she want to read the book, I read the book. If sometimes they want to make a draw, but I'm not good at drawing. I do everything, if Leila she want something or if Zara she want something.'

For Precious, her employer had two young children. She said that 'they've got the older one, is almost two years, she goes to crèche now, but last year I used to look after her full day. But now it's like one hour when she comes back.' With regards to the younger child she said that:

'then they've got the little one, it's not that difficult, cause the mother is here. She feeds him, and when she's finished she gives him to me. And then I play with him, and he falls asleep and yeah, I put him down to sleep.'

Dorothy used a similar idea of play, although she mentioned that her employer's son had many afterschool activities, and it was only when he was

home that they would play. In all of the discussions on the additional childcare role that some of the participants played, there was always a warmth that accompanied the descriptions of play or assistance. Such as Nolulamo, who helps make her employer's children lunch when they come home – as well as asking about their days, which she ended off by saying 'you see, so fun.' Precious expressed a similar sentiment towards her employer and their children, saying 'whenever my child is sick I feel terrible to miss coming here to work cause I feel like, I've missed so much.'

The participants' work day would follow a similar pattern – starting from 8 or 9 o'clock in the morning and finishing up at work around 5 o'clock in the afternoon. There was a variation in the number of days worked in a week. Nolulamo works a 6 day week, and said in her discussion of this 'Sisi [her employer] didn't say you must work Saturday. She say I must be off Saturday. I say, Sisi I want to work Saturday because I am a father and a mother you see.' And while there were a number of employment relationships that conform to past patterns, the sector has shifted to include less formal relationships. For example, Andiswa works for multiple employers during the week, rather than being employed to work in one home like Nolulamo. Nontutuzelo described a similar situation, working three days a week for two different employers; she said 'I'm working as a domestic three days, Tuesday, Wednesday and Thursday.'

Education

Naturally, a common theme that ran throughout the interviews was the idea of the importance of education, in the lives of the participants and in their approach to childcare for the future of their children. I had included the question – what do you wish for your child/children when they grow up – to induce some conversation and to draw out some of the rationale behind the use of childcare. And this question brought out, overwhelmingly, the idea that education was the way in which the participants would be able to secure a brighter future for their dependents. Often this was coupled with a regret at

their own inability to access education. Andiswa said of her daughter that ‘I would like her to be educated, because it’s not easy, even me I wish I was educated but here, here I am.’ Precious expressed a similar concern, saying that ‘I wish they get educated, and better education, they can be somebody that I couldn’t be.’ She goes on to say that ‘I don’t want my children to go through what I went through. I wish they just go to school, get educated, and then they can be somebody they want to be.’ In this way the idea of education and employment is tightly interwoven for the participants. Similarly, Nolulamo expressed her feelings towards the importance of her employment to her ability to care for her grandson, saying that ‘I can be happy if he’s some, if he do something I see, at least this one nice job. I can be happy, I say God you must please, must keep me till Buhle must go up.’ Nolulamo’s prayer was expressed in more concrete terms by Andiswa, who said that she ‘would like to have a proper job that I know, if one day I would pass away my kid would benefit and this and this.’

Some of the participants mentioned how a lack of education had impacted their lives, and how this fed into their desire to work so that their children could have a different life. Precious mentioned that ‘my mum wasn’t working, so I tried to educate myself, it was difficult, so I ended up dropping out. So then I thought I should look for a job as a domestic worker.’ Andiswa mentioned that ‘I didn’t get school, only pass grade 12, I never get a proper job.’ She went on to describe how she had tried to get out of domestic work through homecare of disabled people, ‘I did go for training for that, and I was wishing that I can get, be a nurse. But there’s no bursaries for grown-ups.’ This related to a strong desire to have their children lead lives different to their own, with the very specific desire that they not do domestic work.

Unemployment

The concern regarding access to education was connected to that of employment, and the prospect of a better future. The theme of employment – or the lack thereof – played out in two distinct ways in the interviews.

The first was the sense of the necessity of their employment that came from a number of participants. This generally came up in response to questions that I wanted to use to discuss their emotions or feelings relating to the relationship of their employment to their role as a caregiver. I would ask how they thought their work impacted on their relationship with their child. Aishar simply responded that 'I can say like he doesn't feel like I'm loving him because I'm leaving him there a long time.' More often, the response to this question concerned the absolute necessity of their employment. Nolulamo responded that there were no other options because 'it's me who buy food. So it's rather to work that to stay at home, you see. So they understand that mama is at work, they understand that mama is coming later.' Nontutuzelo also demonstrated the tension she experienced in her statement 'I'm not happy to leave my children. You know, really. But I have to because I don't have any choice, I have to because if I can't go to work, we can't survive.' Although I had intended to try draw out an emotional response, the factual necessity of their employment seemed to discourage an engagement with the potential impacts. They have to work to survive and support their dependents. There didn't appear to be any use in reflecting on the damage caused by their employment.

Unemployment also had a role to play in the care economy that the participants accessed. It was common in the case of women who had become responsible for their grandchildren, to have an unemployed child that helped with the provision of childcare. As in the case of Kholiswa, she said 'my son, my son he try always to help me ... like if he's [her grandson] is sick, my son take him to the doctor neh. Sometimes he, he's got a meeting at school. I can't make a time to go there, to make the meeting at school.' Nolulamo also gets assistance from her son. She said that 'when I'm here at work, it's my son, he's not working. So I say you must look after him.' Nontutuzelo also described supporting two of her adult sons who were

unemployed, but they did not assist with the care of her minor dependent.¹⁴³ In addition to her two sons, the mother of her granddaughter is also unemployed. In 2014, her eldest son: 'he stop work, and said no he's tired, because he don't know what he's doing, because he can't survive.' Of her niece she said, 'this one she was working but she retrenched.' This helps highlight the absolute necessity of employment she expressed, as she is responsible for four dependents. This was an unexpected phenomenon, as the traditional image of familial care economies seems altered, with women maintaining responsibility for two generations.

Dorothy's situation mirrors the classic description of migrant labour, having sent her children home to Malawi to be looked after by their grandmother. However, her reasons were not because of an inability to provide care to her children, but rather because of their relative safety in Malawi compared to living in a South African township. Andiswa mentioned that she and her daughter 'used to live with my mother, we used to live together with her ... and then she was responsible whether I'm already at work, she will take care of her, she will dress her.' Since the death of her mother in 2015, her care regime has changed. She mentioned that 'now I'm living with my younger sister, she's the one who's taking care of her when I'm not at home ... because she's still not working.' The fact that her sister is unemployed means that she has an additional care resource available to her, much like Kholiswa and Nolulamo, who are able to rely on their unemployed sons. When familial unemployment was not present, unemployment generally still contributed to the care economy. Precious was able to make use of a 'sort of nanny' who lives with her, 'but she's looking for her own job. She's just helping me out.' Precious does pay for this help, while her nanny is unable to find her own job. In this way unemployment featured in most of the participants' care regimes. Sometimes the way in which it did so conformed

¹⁴³ In Nontutuzelo's case, her niece came to live with her after her mother died. During the course of the interview Nontutuzelo referred to her niece as her 'daughter' and the minor dependent as her 'granddaughter.' This may have been for ease of reference, but also made clear the dependency in their relationship.

to traditional descriptions of access to childcare, however a more varied picture came from the data.

Time Usage

Before going to work, the interviewees mornings are largely dictated by the needs of the children they are raising. Nontutuzelo is the exception to this, as she does not need to get her granddaughter ready in the morning. However, her response when asked about her morning routine highlights the impact of having to ready children in the morning. She said that:

‘now it’s easy I can wake up about 7 o’clock, because of the transport. But before I was wake up about 5 o’clock in the morning, because I have to prepare for my children, dress them, give them porridge, and then I waited for the transport to fetch, to fetch them to school, and then quickly left my house 7 o’clock.’

She went on to say that ‘it wasn’t easy before, because as a domestic worker you have to wake up early to tidy your house first, to clean everything, and then left because you have to be early at work.’ The other participants mirrored much of what she said. Andiswa described her strategy to the pressures of the morning as involving some preparation the night before, so ‘I wake up in the morning at 5 o’clock, I make sure before we sleep I’m getting everything ready for her. She will take a bath, before we sleep, so it can be easy in the morning when she’s going to school.’ Nolulamo approaches her mornings differently, saying that ‘that time I was fresh, I was doing the ironing before I sleeping. But sometimes I didn’t do that. So I iron the things for Buhle before I come to work. I wake up early, I iron the things. I do the lunchbox for Buhle.’ It was common for the participants to describe a morning routine in which they would wake up first to begin the morning preparations and then wake their children up a bit later, like Aishar who said, ‘I wake up around twenty to 6 in the morning, and then I get him up and ready at 7 o’clock.’ Precious is also up at 5 o’clock, then she has to ‘prepare the one that I bring here, the older one, cause he comes to crèche here [close to her place of work]. So I make his lunchbox, and make him ready to bring to school.’ The mornings before work are filled with the domestic business that

they are often paid to perform for others, as mentioned by Nontutuzelo. For example Dorothy, who does not live with her children, wakes up at 6 o'clock and then does the dishes and cleaning of her own house, before she goes to work.

Transportation had a large role to play in the shape of the participants' days. All of them had to make use of some form of public transportation to get to work – even multiple forms. While Dorothy takes the train in to work, Aishar uses 'a taxi from where I'm staying to the train station, and there I take a train.' The impact of public transport was most noticeable at the end of the workday, when the participants would leave work between 4 or 5 o'clock in the afternoon. Here Kholiswa said 'sometimes, at home, I get at home half past seven, sometimes it's quarter to eight, it depend on the bus.' Precious expressed a similar sentiment, saying that 'when I'm late, cause the taxi sometimes take long time to get full, so then you get home late.'

As much as mornings are dominated by care needs and domestic concerns, similar issues were mentioned with regards to time spent in the evenings. The differential burden of care that women shoulder was more apparent here. In spite of there being a number of male caregivers mentioned, their participation in care seemed to fall away once the participants came home. For example, Precious said that 'at home I have to, when I get there I have to make sure that I bath them, cook for my husband and my kids, bath them and then we sleep.' Kholiswa also mentioned in the description of her day that after a bath 'then after that make a supper,' even though her son, who helps with Alakhe during the day is there. The same for Nolulamo, who reported that her son either cooks lunch or gives a sandwich to Buhle after school, but that she is still the one cooking the meal in the evening, 'I'm buying noodles for that time I'm busy cooking, because it's quicker with noodles.'

There seems to be a similarity in night-time routines and time spent once the participants come home from work. Bathing, dinner and bed are the activities that make up their relationships. Andiswa described her evenings as: 'I tell her she must take a bath before she sleep ... and then we'll do the homework.' Nolulamo also referred to school work as a part of her evenings after dinner:

'and then I ask about the homework, how did you write to school,
"Mama I don't know" but I teach him the "la le li lo lu" ... But I try to do
my best, to organise the things, to make to right and then ask him ...
"Mama I do this," and then if he don't know I help.'

Aishar's son is much younger, and so her description of her evenings was different to that of Nolulamo and Andiswa. She said that 'when it's 9 o'clock I sing a song for him, and then he get to sleep.' She expressed concern at the toll her workday has on her evenings, saying that:

'when I'm coming from work I still must do stuff for him and sometimes
I'm shouting without anything wrong. It's like I'm tired already, and he's
doing something, which is not good too me, Like I'm shouting with
him.'

This illustrates the difficulty of bearing the full burden for a child's care. In a case such as Aishar's, this could be considered in light of her concern that 'I feel like I don't love him,' because of the long hours they are apart.

When it came to my question regarding time spent with their children, these evenings were generally discounted in the answer given. This was a question that was often affected by the language barrier, but the result was quite revealing. Although I asked, 'how much time do you get to spend with your child in a day', Aishar's answer was 'only Saturday, Sunday' and I had to rephrase the question to find out that she had maybe three hours with her son in the evening. Kholiswa answered that her relationship with her grandchild was 'only Friday, Saturday and Sunday only.' Which for her was not enough time. For Nolulamo, her time spent with Buhle was, 'Sunday I am there, I do breakfast I do lunch I do supper and then they are around with me, they are happy because Mama is here.' In her description of her Sundays with Buhle she said, 'In summer, because I live next to the beach, I taking, I put the lunch, and then I going to sit to the beach ... when it's hot and then I

go with him, sitting there, enjoy, to come into the water.’ Precious expressed similar resignation when answering, saying that ‘it’s short of time – you know cause I only spend them at night when I get home, only time I spend with them, it’s only weekend.’ In this way the value of the time spent on the weekend is highlighted, perhaps because it is not also filled with completing domestic necessities like the evenings after work are.

Other Socio-Economic Factors

The challenges that the participants faced were generally not limited to childcare in isolation, but were a composite of a number of factors that all worked together as barriers to their perception of quality of life.

Many of the participants noted that healthcare had an impact on their ability to work. Their ability to go to work everyday was impacted when their children got sick, which would often result in them having to miss a full day of work. Precious described this problem as follows:

‘I have to take my child to the clinic, and the clinics are, they take the whole day sometimes, in the location cause, we don't have money, enough money to take them to the doctors, cause they expensive, so you got to the government clinic, and it’s a long process for your child to get helped there.’

Kholiswa mentioned that her son is able to take Alakhe to the doctor when he gets sick, meaning that she doesn't have to miss a day of work. However, Andiswa described a situation similar to Precious, saying that ‘I have to take care of her, take her to the clinic if she’s sick’ which also requires Andiswa to miss a day of work. Precious described a desire to not miss work saying that, ‘it’s not easy for the person that I work for,’ which was one of the reasons behind the unique solution she had tailored for her children. She mentioned that when her first child was in crèche in the location, ‘the first one would get sick all the time.’ In this way the quality of the crèche is linked to the participants’ ability to work, because any illness acts as an impediment to their normal day.

The interwoven issues of transport and housing also played a role in the participants' stories. Nolulamo said that 'since I am taking the bus, the taxi, they take time. Sometimes it's quicker, sometimes I'm coming 7 o'clock.' Similarly, Andiswa said, 'because of transport, sometimes you get [home] at 7 o'clock, because of the traffic jam, yes. But sometimes, half past 5 to 6 some days. Depends on the traffic jam.' The surface issue raised by these answers is the difficulty that using public transport has on their ability to get home from work – and that often they will lose much of their home time to transportation. The underlying issue that is involved in this factor is that of housing. The fact that the participants do not live close to their place of employment has a negative impact on their daily commute. Dorothy brought up the issue of housing in townships in her decision to send her children back to Malawi. She did not feel that having them grow up in a township would be safe, but until she could find a place to live closer to work (and therefore in a safer area) she would have to make do with living apart from her children. At the time of her interview she mentioned that she had moved to Pinelands, and needed to check with her landlord if her children could come and live with her.

This places domestic work as a form of employment within the social context that it operates. The challenges experienced by the participants were multi-layered. Rather than availability of childcare being a problem that was verbalised by the participants, it was the multitude of other factors that were discussed in the interviews that were identified as a cause for concern.

CHAPTER FIVE

ANALYSIS

This chapter serves to draw together the research I conducted and the literature to which it contributes. Herein I discuss how my research shows change in the care solutions domestic workers make use of and how the dual care burden remains a challenge that they are faced with. I go on to discuss the themes of unemployment and education as they emerged from the literature and my data. This discussion forms the background for the implications that emerge with regards to the desirability of socialisation of care and the limited efficacy of organisation in achieving change. From these conclusions, I advance the argument that a universal system of care should be made available by the state, as it has the potential to disrupt gendered oppression experienced by domestic workers. In this way it helps them achieve a meaningful equality, and as a result can be considered a redress measure under s9(2) of the Constitution.

Solutions Used

In her research conducted during the Apartheid regime, Cock found that most women in her study lived with their children but by a slim majority.¹⁴⁴ Her study surveyed the various childcare solutions used by her participants, and the frequency with which they occurred. The solutions reported were: placing their children in crèche; the children were looked after by neighbours; some by no one; others by a relative, described as usually being a grandmother or older child; and finally by paying someone else to look after their children.¹⁴⁵ The most commonly reported solution in her study was the reliance on family members, with half her sample making use of this solution. Cock noted that 'anxiety was expressed not only by mothers of pre-school children, but also by those mothers whose children are already of school-going age. They worry because they have no check on what these children do between the time they get home from school and the time their

¹⁴⁴ Cock op cit 8 at 54.

¹⁴⁵ Cock op cit 8 at 53.

mothers get home.’¹⁴⁶ With regards to the solutions that mothers sought out during this time, Cock reported that ‘the tension between the domestic workers’ roles of mother and wage-earner are aggravated by the fact that blacks are in the worst position as regards the provision of day care facilities for the pre-school child.’¹⁴⁷

Ally’s more recent study looks to the variety of solutions that have been documented in international literature, such as the engaging of family resources; the use of community resources such as neighbours, or by hiring another person to provide care.¹⁴⁸ With regards to the range of solutions that domestic workers rely on, Ally notes that ‘in these national and global care chains, domestic workers almost always rely on private (family and market) sources of care work.’¹⁴⁹ In Ally’s study, she found that ‘only one worker had access to an affordable commercial child care centre, and none of the remaining women had access to non-familial sources of support for housework.’¹⁵⁰ Her main finding was that when it came to childcare solutions, her participants ‘relied on feminised kinship for the provision of care.’¹⁵¹

The primary reliance on female relatives that came through in both Cock and Ally’s studies was not matched by the experiences I encountered during the interview process. While very few women were shown to have access to a crèche or day-care centre in Ally’s study, all of the children in my sample were sent to a crèche, and only in the case of Precious’s infant son was an alternative solution to a commercial centre sought out. The difference in access to childcare centres noted in my research, compared to Ally’s, may be a function of time or location. Ally’s study was published two years after the promulgation of the Children’s Amendment Act, suggesting that her research would have been conducted at the time the legislation was enacted

¹⁴⁶ Cock op cit 8 at 54.

¹⁴⁷ Cock op cit 8 at 54.

¹⁴⁸ Ally op cit 22 at 134.

¹⁴⁹ Ally op cit 22 at 134.

¹⁵⁰ Ally op cit 22 at 134.

¹⁵¹ Ally op cit 22 at 134.

and just coming in to force (2007 -2009). The research I conducted was during 2017, a full ten years after this Act had been promulgated. Since Ally's study was conducted in the townships in Johannesburg, it is not possible to know whether access to childcare centres was this common in Cape Town at that time. It is nonetheless noteworthy that there is such a dramatic difference in the access to crèches observed in my participants, compared to those in Ally's.

The other core feature of the previous studies that discussed childcare was the reliance of female relatives for the provision of care. A large number of children in Cock's study lived with their grandparents while their mothers worked, or were looked after by older female siblings. Ally's key finding was that care was primarily provided by female relatives. There is some correlation with these observations in my research. Andiswa relied on her mother while she was still alive, and then her sister to provide care to her daughter. Dorothy had sent her children home to her mother-in-law in Malawi. Another manifestation of this reliance on female relatives came in the form of responsibility that grandmothers were acquiring for their grandchildren. Kholiswa and Nolulamo had both become the primary caregivers for their grandchildren after the deaths of their daughters. Similarly, Nontutuzelo was the primary breadwinner for her niece and her niece's daughter. This situation somewhat challenges the traditional narrative, with these women becoming responsible for raising two generations of children while they work as domestic workers. Some of the participants did make use of family members to aid in providing care, although in my study these family members were job seeking adults rather than retired grandparents or elder siblings. The assistance Kholiswa and Nolulamo derived from their adult sons was a new narrative within the provision of care. Andiswa's sister also fell within this category of job seeking adult, although her assistance conformed with the trend observed by Ally.

Although there seemed to be little change from the conditions observed by Cock, and then by Ally, the information drawn from my research creates a more complex picture of the solutions used by domestic workers for their children. What has remained consistent is the reliance on private solutions by domestic workers for their childcare needs. The state's policy with regards to the care of children relies primarily on alleviating the shortfalls within individual family units, rather than socialising care. Ally commented on the provision of the Child Support Grant to parents that 'the CSG provided only minimal state assistance for their care obligations. Most important, it did nothing to disrupt the pattern of feminised familial responsibility and provision of care.'¹⁵² This approach by the state – to try make up for any lack at a familial level – has been carried through to the National Integrated Early Childhood development policy.¹⁵³ It states 'government recognises that, in the first instance, the child's parents are responsible and important for his or her care, development and well-being.'¹⁵⁴ Government limits its role to removing barriers of access for parents that wish to make use of ECD services.¹⁵⁵ While the policy has the potential to increase the availability of access to childcare, it does not adopt an approach that socialises the provision of care that would disrupt the differential care burden placed on mothers, who have to manage that burden along with that of employment as domestic workers.

Dual Care Regime

Cock and Ally both note the irony inherent in many of the lives of domestic workers, 'that, in providing care to other families, domestic workers are unable to provide care to their own.'¹⁵⁶ Cock described this irony, writing 'many domestic workers stressed that they had to look after two families and

¹⁵² Ally op cit 22 at 140.

¹⁵³ Supra note 27 at 25.

¹⁵⁴ Supra note 27 at 22.

¹⁵⁵ Supra note 27 at 25.

¹⁵⁶ Ally op cit 22 at 134.

had to neglect their own families in the process.¹⁵⁷ This irony is present in situations where the conditions of employment extend beyond cleaning, because the terms of employment include the provision of childcare for their employers' children. Ally describes the national care chains in which domestic workers form a link as requiring them 'to rely on minimal state support to provide basic care to their children, while a supply of domestic workers to middle class families ensures cheap, affordable and good quality care.'¹⁵⁸ Domestic workers become a necessary link in the care supply chain because their employers are able to buy their way out of the domestic supply chain, and enter the job market.¹⁵⁹ When Cock conducted her study, she noted that 'cheap, black domestic labour is the instrument whereby white women escape from some of the constraints of their domestic roles.'¹⁶⁰ Domestic workers did not, and still do not have the same ability to outsource their care needs, and will need to perform the same tasks for their families, as they do for their employers.

This dual care regime was still plainly evident in the lives of the domestic workers that I interviewed. The domestic workers whose employers had children would have an element of the childcare incorporated into their workday. The older the children of the employer, the less the provision of childcare featured in the participant's workday. For example, Dorothy did not spend much of her workday looking after her employer's son, because he attended so many afterschool activities, whereas Precious provided care full day before her employer's daughter started at crèche. Once the daughter was old enough to go to crèche, Precious only needed to spend an hour of her workday with her.

The personal domestic duties that the participants needed to perform would occur either in the morning before work, or once they had come home

¹⁵⁷ Cock op cit 8 at 53.

¹⁵⁸ Ally op cit 22 at 143.

¹⁵⁹ Cock op cit 8 at 52.

¹⁶⁰ Cock op cit 8 at 53.

in the evening. Nontutuzelo captured the problem that domestic workers are faced with when she said that as a domestic worker she had to wake up early to clean her own house first. A problem that emerges, as noted by Cock, and that surfaced through my interviews, is that their time with their families is severely limited by their jobs. The participants in my study discounted the morning and evening activities from the time they thought they got to spend with their families. By their definition of the time they get to spend with their children, it is limited to their days off. Nolulamo most emotionally painted this weekend downtime in her description of Sundays at the beach with her grandson Buhle.

Unemployment

A notable trend within the data collected during my interviews was the tangential issue of unemployment – particularly among family members that were then able to help provide care. Important to recognise is that South Africa is experiencing some of its highest unemployment rates since 2003.¹⁶¹ This particular contextual factor ran through a number of the thematic areas explored in my findings. The large pressure of the possibility of unemployment reinforces historical channelling of black women into domestic work – and makes simple regulation of the sector ineffective in securing change. Most of the participants expressed the necessity of their work in providing for their families, and lamented not having had the educational opportunities that would allow them to access different forms of employment. It also drove their desire that their children and dependents receive a full education – starting from crèche. They all expressed a desire that their children have the jobs they wish for, and to go to university so that they may escape the unemployment and financial insecurity that most South Africans are currently trying to navigate. Most tangibly, the high unemployment rate was most evident from the number of relatives – children, siblings and the

¹⁶¹ Sunita Menon 'SA's Unemployment Rate hits a 13-year High' *Times Live* 1 June 2017 at 15:08, available at <https://www.timeslive.co.za/news/south-africa/2017-06-01-sas-unemployment-rate-hits-a-13-year-high/> accessed on 1 December 2017.

like - that were able to provide care because they did not have jobs. Also tangible were the problems that finding jobs would have on the participants care regimes as they would lose the support that they had come to rely on.

Education

Employment and education are concepts that are tightly woven together, both in the literature and in the discussions that came from my interviews. The national policy recognises that ECD services and support have the potential to strengthen the economy, because access to these services is 'associated with higher levels of employment and earning potential, and ultimately an increase in productivity'.¹⁶² Education is held to be the ticket out of poverty, and by ensuring access; people's lives will be resoundingly improved to the benefit of the country as a whole. Fish noted that domestic workers often take up the jobs they do because they have little other choice as a result of the limited access to educational opportunities under apartheid.¹⁶³ My participants repeatedly expressed the sentiment that a lack of education operated as a barrier to better employment opportunities. Andiswa described to me the many ways she had tried to improve her education so that she could leave domestic work and enter the health care sector, while Precious noted that her inability to continue schooling because of her mother's unemployment was the reason she eventually turned to domestic work – and why she worked so hard to improve the chances of her children by making use of ECD services. All of the participants expressed a desire to keep their children learning over time so that they will one day be able to access the jobs that they dream of.

Recourse to domestic work in order to secure their children's future was a recurring image. Fish noted that her participants felt like they had no other options,¹⁶⁴ and that cycles of poverty and lack of education trap

¹⁶² Supra note 27 at 21.

¹⁶³ Fish op cit 9 at 83.

¹⁶⁴ Fish op cit 9 at 83.

workers in the ‘highly rigid institution’¹⁶⁵ of domestic work. I would suggest that the imperative of staying in domestic work is also fuelled by a need to secure the educational opportunities of their dependents. I noted, when trying to discuss the impact of domestic work on their relationships with their children, that many respondents would not consider the negative features of their employment because of its sheer necessity. Nolulamo lamented the fact that she was unable to be around for her grandson, but that they could not survive if she did not work. Her wish that she should live long enough to keep working, so that she could secure her grandson’s education, tied this economic imperative to Buhle’s future. While prevailing systems of exploitation still operate to determine the employment opportunities available to women who seek work as domestic workers, the financial exigencies of privatised education adds to the rigidity of the national care chain system.

Socialisation of care

The tension that exists when it comes to considering the provision of childcare is found in its various benefits. Provision of public childcare is recognised by WIEGO as ‘one key policy intervention which has the potential to greatly improve the productivity and incomes of informally working women.’¹⁶⁶ This is in contrast to the child-centred argument that ‘the socialisation of childcare is not always considered optimal – that mothers (and fathers) who wish to care for their own children should be empowered to do so by society.’¹⁶⁷ This second opinion of childcare has found favour with the state in its position on the provision of childcare. The national policy on ECD states that ‘it is internationally recognised that the family is the natural environment for the growth and well-being of children and that parents bear the primary responsibility for promoting children’s development and well-being.’¹⁶⁸ This focus on child first and foremost, and the family as the primary holder of responsibility for a child’s development is drawn from child-centred

¹⁶⁵ Fish op cit 9 at 80.

¹⁶⁶ Alfors op cit 44 at 1.

¹⁶⁷ Alfors op cit 44 at 1 (internal citation omitted).

¹⁶⁸ Supra note 27 at 25.

policy and law making, as mandated by the United Nations Convention on the Rights of the Child and section 28 of the Constitution. This is part of the larger state interventions that have a child-centred approach to social security – most notably in the form of the CSG.

Ally counters this child-centred policy in her argument that care should be socialised, arguing that the decision of the state to follow this approach (with regards to the CSG) ‘has resulted in a reinforcement of the “national care chain” and the CSG has become a particular part of the post-apartheid political economy of care.’¹⁶⁹ This post-apartheid care chain is drawn from the systems of oppression that characterised the apartheid state, and so it is still strikingly similar to that which preceded it. Ally rights that ‘the state’s minimal child support grant did not allow her [a participant] to offer the same care solution to her children that she represented for her employers.’¹⁷⁰ An example of this was also present in my study. Precious struggled to make enough money so that she could place her child in a crèche close to the home of her employer, so that her child could benefit from a higher quality education than the one available from the crèches in the township, with which she was not satisfied. She was required to hire a job seeker to look after her infant son, while she cleaned the home and minded the children of her employer. The system has not disrupted her primary responsibility for care, and she was struggling under the burden of trying to attain a similar quality of care as that enjoyed by her employer.

The state approach to care that narrows in the focus on the child as the beneficiary, fails to disrupt the wider systems that reproduce oppression, such as this post-apartheid care economy. The national care chain reproduces the demand for the provision of childcare in the homes of the middle classes, while making the provision of this care the only option that is available to women who take up domestic service. Ally’s argument against

¹⁶⁹ Ally op cit 22 at 140.

¹⁷⁰ Ally op cit 22 at 142.

the state's approach to childcare suggests that a socialised approach, which considers the mothers as beneficiaries as much as the children would be more desirable. Similarly, WIEGO advocates that 'addressing women's disproportionate responsibility for unpaid care work is essential to improving their productivity at work and facilitating their economic empowerment.'¹⁷¹ For domestic workers to truly realise the benefits of the new democracy in their lives, the old systems of oppression and the social factors that reproduce them need to be addressed. This requires a more socialised approach by the state to the issue of childcare; that posits both parent and child as beneficiaries of the system.

Efficacy of Organisation

The DSD includes in its policy on the provision of ECD the objective that the state will facilitate:

'increased parental demand for early learning opportunities for their children through public communication about the importance of early childhood development for health and human capital across the life course.'¹⁷²

In lieu of providing universal access to a service that the state recognises as 'a fundamental and universal human right to which all young children are equally entitled without discrimination'¹⁷³ the state has seen it fit to include in its plan a commitment to educating parents so that they can demand this service for their children.

The evidence from the literature on the campaign by SADSAWU to have domestic workers included in the legislation on unemployment insurance funds shows the organisational power that has been marshalled in the past to secure important social protections for a group that often becomes marginalised because of the isolating nature of their employment. Fish observed that by drawing on active civil society engagement during the legislative process, 'domestic workers established a central role in ultimately

¹⁷¹ Alfes op cit 44 at 23.

¹⁷² Supra note 27 at 64.

¹⁷³ Supra note 27 at 22.

crafting new labour legislation.’¹⁷⁴ This past campaign is evidence that a concerted and coordinated programme that demands delivery of high-quality and affordable childcare could have the potential to radically alter how domestic workers experience access to the service, within the framework set by the state.

Ally has criticised the increased state intervention into trying to regulate the employment of domestic workers, commenting that:

‘the state had effectively crafted a system that formally regulated [domestic workers] as a supply of quality, affordable, in-home care to more privileged households, reinforcing social stratification.’¹⁷⁵

The lesson to be drawn from Ally’s analysis is that demanding inclusion and delivery within the framework set by the state may come with limited efficacy in its ability to realise a change that disrupts systems of oppression. It may not be enough to organise and demand that the state deliver on the promises it has made in its policy – a complete overhaul to socialise the provision of childcare may be required to truly shift the factors that reproduce the conditions driving women to domestic work. From these analyses of the impact of past state intervention, it is impossible to say whether a campaign compelling the state to perform its promised role may only serve to perpetuate the cycles in which domestic workers currently operate.

Legal Analysis

Based on my experience of research, it seems that the issue of the provision of childcare – although multifaceted – can perhaps be best understood through the prism of the right to equality. The work of Fish and Ally both show that domestic workers have not yet realised the ideals of democracy in their lives. This finding was also mirrored in my research. The on-going spatial segregation that characterises much of the participant’s lives is a symptom of inequality. The differential care burden that is still evident in the homes of the participants is also an equality issue. Domestic workers as

¹⁷⁴ Fish op cit 9 at 199.

¹⁷⁵ Ally op cit 22 at 16.

black women have not yet realised functional expressions of equality. We look to them and their experiences because of their particular legacy as a group in South Africa.

Section 9(2) of the Constitution allows for the enactment of legislation whose purpose is to protect or advance persons impacted by unfair discrimination. If the socialisation of childcare is primarily aimed at disrupting systems of oppression that place the sole responsibility for childcare on women, then law designed to make childcare freely and evenly accessible will benefit women. Their disadvantage as the sole provider of care will be outsourced to the state. This envisages the provision of childcare not as a form of social security – but as a substantive redress measure that can help achieve a meaningful equality for domestic workers specifically – and women more generally. It will also benefit single fathers, and children under the protection of the state – because all children need to receive care under such a system. The indirect nature of the redress will have the majority of beneficiaries under the scheme come from a previously disadvantaged group.¹⁷⁶ Practically men will benefit too. But on a large scale, by shifting the way the responsibility for childcare is framed, even though men may benefit in practice, women still realise redress, because their traditional gender roles are disrupted in the process.

The provision of childcare in practical terms would still amount to a form of social protection – as envisaged under the broader understanding of social protection discussed earlier. But by designing the provision of childcare as a social protection, it can become subject to the internal limitations of s27. While it can be expected that any large-scale provision of childcare would need to be achieved over time due to resource constraints – the limitation of the provision of social security to those who cannot afford it is the most damaging limitation from the s27 right. This is the kind of system

¹⁷⁶ *Minister of Finance and Other v Van Heerden* 2004 (6) SA 121 (CC). The court held that indirect redress measures need to have the majority of beneficiaries come from a previously disadvantaged group.

that is in operation at the moment – where state intervention and support for the provision of care is limited to a subsidy for the children that attend centres who satisfy the means test. This kind of stopgap measure currently employed by the state may not have the ability to significantly alter the experiences of women, because it is envisaged as a temporary support. For a measure to have seismic impact, it needs to be designed in a way that seeks to achieve such a goal. Patel et al speak into this point when they write that:

‘improving the status of and position of women and overcoming unequal gender relations are important policy outcomes that need to be incorporated into social protection programmes, even those that focus primarily on children.’¹⁷⁷

Because care has been suggested as a curative for the unequal burden that women bear, the provision thereof would have the effect of advancing a domestic worker’s full enjoyment of all her rights and freedoms. Her access to this sort of change should not be limited by a means test because the care is seen as a social protection for children that must be met. It is important to maintain the educative focus of the provision of care, as it currently has in the state’s conception and policy – but the potential for designing the system in such a way that it could act as a redress measure should also be included in the system.

This analysis suggests that the provision of care be understood and designed in such a way that it continues to act as a social protection aimed at developing the educative potential of children, but that it is also designed in a way that socialises the provision of care so that it can act as a redress measure. Domestic workers in South Africa suffer from on-going gender and racial oppression that exist as a legacy of the patriarchal and racist apartheid government policies. By shifting the burden of care more fully onto the state, prevailing gender norms that women bear the primary responsibility for care can be disrupted. By ensuring universal access to care, women living in townships will have a more equitable access to care than what is currently available – benefitting them and their children. This also addresses racial

¹⁷⁷ Patel et al op cit 62 at 80.

disparities that contribute to the continuing oppression of domestic workers that is closely related to where they live.

CHAPTER SIX

CONCLUSION

South African society continues to be shaped by the impact of the racist policies of the former apartheid government, as well as on-going gender based oppression. The Constitution has brought a transformative vision to South African law that seeks to remove these oppressions over time. The Constitution itself cannot achieve these goals, but must be applied to the creation of laws and policies that will have an operational impact on the ways in which people experience South African society. I have taken a practical approach to examining the shifts in South African society by looking into the experiences of one of the most disadvantaged sectors, by interviewing domestic workers. I then examined this empirical evidence through a Constitutional lens as a means of interpreting the data that emerged from the interviews.

I adopted an intersectional feminist approach in my methodology in order to take into account the on-going social oppressions experienced by the research participants that this dissertation has examined. The research included eight in-depth interviews that provided emotive and practical discussion that related to the experiences of the participants. The data that came from the interviews produced a number of themes for analysis, some of them anticipated and others unexpected. Overall, all of the participants had made use of a crèche for the provision of care during the early years, with a number of permutations of additional solutions used to fill in the gaps between work and when they came home. Unemployment amongst their family members had an important role to play in their care solutions, as well as the way they thought about and described their employment as domestic workers. Education and unemployment were two very dominant themes that were woven into all the of the participants' contributions. There was a strong focus on the transformative power of education, and how this would ensure a bright future for their dependents. Education was critically linked to their

employment as domestic workers – as a lack of access to education was felt to limit their choices.

Overall, it was evident that domestic work continues to be a difficult and time consuming occupation, with spatial inequality strongly influencing the amount of time the participants were able to spend with the children in their care. Long days at work were extended by time spent in traffic on their way home to the townships in which they lived.

When comparing the data that emerged from the interviews, there were a number of findings that were very similar to the studies of Cock and Ally. Domestic workers still work very long days, and are required to fulfil the primary caregiving role for their families, as well as generating much of the household income. The dual care burden was evident in their descriptions of their daily lives. What was significant was that all of the participants made use of external care facilities for their dependents, which is a vastly different picture to that of previous studies. This was considered in the light of the Department of Social Development's increased delivery of ECD services through its National Policy. Whether this increased access in Cape Town is true across the country is worth further study. This important shift in the way in which domestic workers access childcare shows that there may be a number of shifts in their lives since the studies of Ally and Fish, and indicate that there is a need for further research to be done on how their lives are changing over time.

This study was limited by the fact that it made use of in-depth qualitative interviews. As a result, the data collected cannot be generalised across the country. However, the change observed within the small group of participants does suggest that there is scope for further research into the experiences of domestic workers on a large and quantitative scale. The data collected was also limited by my identity as a researcher. Although I could recognise the potential for reticence on the part of the interviewees in talking

to a white English speaking person, I could not cure this in my research design.

Nonetheless, the content of the interviews provided a rich sample of experiences with which to consider the transformative power of the Constitution in society. While equality is not a quantifiable figure, it does have identifiers. It was evident through the on-going dual care responsibility that the participants bore that they were not yet living a life in which the right to be free from gender-based discrimination had been realised. Similarly, the spatial separation between their homes and schools, and those of their employers spoke to the legacy of apartheid spatial planning and its lasting effects many years into the new democratic dispensation.

The contention that a socialised care regime would help reduce inequality experienced by domestic workers was considered from a feminist paradigm. This informed the way in which I read and analysed the answers of the participants. In addition, this analysis was conducted from a theoretical assumption that the Constitution has transformative capabilities that should be utilised in practical ways, in order to achieve the society promised in its preamble. The literature suggested that childcare should be socialised as a form of social security to better protect the mothers and caregivers who access it. The transformative Constitutional project also suggested the possibility that any regulation of childcare in a more universal manner would contribute to the reduction of inequality experienced by women, and as a result should be conceived of as a redress measure permitted under s9(2) of the Constitution. Section 9(2) cannot be read to create a justiciable right to universal access to childcare, but by framing the legislative goals differently, the state's responsibility can be differently imagined. In this way, a transformative theoretical assumption informed the primary recommendations I made based on the interviews.

CHAPTER SEVEN

BIBLIOGRAPHY

Legislation

The Basic Conditions of Employment Act 75 of 1997

The Black Education Act 47 of 1953

The Children's Amendment Act 41 of 2007

The Constitution of the Republic of South Africa of 1996

The Labour Relations Act 66 of 1995

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

The Unemployment Insurance Act 63 of 2001

Government Publications

Department of Social Development *Strategic Plan 2015-2020* (Pretoria: South African Government).

Department of Social Development *National Integrated Early Childhood Development Policy 2015* (Pretoria: South African Government).

Department of Labour *Sectoral Determination 7: Domestic Worker Sector. Basic Conditions of Employment Act no. 75 2002* (Pretoria: South African Government).

Statistics South Africa *Quarterly Labour Force Survey 2017 Statistical Release P0211 quarter 1* (Pretoria: Statistics South Africa).

Cases

Government of the Republic of South Africa v Grootboom ZACC 19, 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC).

Minister of Finance and Other v Van Heerden 2004 (6) SA 121 (CC).

National Coalition for Gay and Lesbian Equality v Minister of Justice 1999 (1) SA 6 (CC)

Books

Ally S, *From Servants to Workers: South African Domestic Workers and the Democratic State* (South Africa, University of KwaZulu-Natal Press 2009).

Bosman-Sadie H & Corrie L, *A Practical Approach to the Children's Act* (Pietermaritzburg, Lexis Nexis Butterworths 2010)

Cock J, *Maids and madams: domestic workers under apartheid* (South Africa, Women's Press 1989).

Fish JN, *Domestic Democracy: At Home in South Africa* (United States of America, Routledge 2006)

Fudge J, 'Gender, Equality and Capabilities: Care work and Sustainable Development' in Novitz T & Mangan D (eds) *The Role of Labour Standards in Development* (New York, Oxford University Press 2011).

Goldblatt B, 'Citizenship and the Right to Child Care' in Gouws A (ed) *(Un)thinking Citizenship: Feminist Debates in Contemporary South Africa* (South Africa, UCT Press 2005).

Gqola P, *Reflecting Rogue: Inside the Mind of a Feminist* (Cape Town, MF Books 2017)

Hesse-Biber SN, *Mixed Methods Research: Merging Theory with Practice* (United States of America, Guilford Publications 2010).

Langille B, 'Human Freedom and Human Capital' in Novitz T & Mangan D (eds) *The Role of Labour Standards in Development* (New York, Oxford University Press 2011).

Liffmann R, 'Social Security as a Constitutional Imperative: An Analysis and Comparative Perspective with Emphasis on the Effect of Globalization and Marginalization' in Olivier M et al (eds) *The Extension of Social Security Protection in South Africa* (Cape Town, Siber Ink 2001).

Morgan DL, *Focus Groups as Qualitative Research* Qualitative Research Method Series 2nd ed (United States of America, SAGE Publications 1997).

Olivier M & Jansen van Rensburg L, 'Perspectives on the Concept of Social Security' in Olivier M et al (eds) *The Extension of Social Security Protection in South Africa* (Cape Town, Siber Ink 2001).

Olivier M 'The Concept of Social Security' in Olivier M, Smit N & Kalula E (eds) *Social Security: A Legal Analysis* (Pietermaritzberg, Lexis Nexis Butterworths 2003)

Patton MQ, 'Qualitative Interviewing' in *Qualitative Research & Evaluation Methods* 3 ed (United States of America, Sage Publications Inc. 2002).

Riessman CK, 'When Gender is Not Enough: Women Interviewing Women' in Lorber JF, Susan A. (ed) *The Social Construction of Gender* (United States of America, SAGE Publications Inc. 1991).

Journal Articles

Atmore E, 'Early Childhood Development in South Africa – Progress Since the End of Apartheid' 2013 (21) *International Journal of Early Years Education*.

Biersteker L, Dawes A, Hendricks L & Tredoux C, 'Center-based Early Childhood Care and Education Program Quality: A South African Study' 2016 (36) *Early Childhood Research Quarterly*.

Casale D and Posel D, 'The Continued Feminisation of the Labour Force in South Africa' 2002 (70) *South African Journal of Economics*.

Devereux S, 'Social Protection in South Africa: Exceptional or Exceptionalism?' 2011 (32) *Canadian Journal of Development Studies*.

Dinkelman T and Ranchhod V, 'Evidence on the impact of minimum wage laws in an informal sector: Domestic workers in South Africa' 2012 (99) *Journal of Development Economics*.

Fish JN, 'Engendering Democracy: Domestic Labour and Coalition-Building in South Africa' 2006 (32) *Journal of Southern African Studies*.

Gaitskell D, Kimble J, Maconachie M and Unterhalter E, 'Class, race and gender: Domestic workers in South Africa' 1983 (10) *Review of African Political Economy*.

Gama N & Willemse L, 'A Descriptive Overview of the Education and Income Levels of Domestic Workers in Post-Apartheid South Africa' 2015 (80) *GeoJournal*.

Klare K 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal of Human Rights*.

Langa P 'Transformative Constitutionalism' (2006) 17 *Stellenbosch Law Review*.

Meier C & Lemmer E, 'Problems and Prospects in Early Childhood Education Provisioning in Turkey and South Africa' 2017 (52) *Journal of Asian and African Studies*.

Nyenti M, 'Role of Constitutional Principles and Values in the Development of Social Protection in South Africa' 2016 (16) *Global Social Policy*.

Patel L, 'Poverty, Gender and Social Protection: Child Support Grants in Soweto, South Africa' 2012 (11) *Journal of Policy Practice*.

Patel L, Hochfeld T, & Moodley J, 'Gender and Child Sensitive Social Protection in South Africa' 2013 (30) *Development Southern Africa*.

Smit N & Mpedi GL, 'Decent Work and Domestic Workers in South Africa' 2011 (27) *The International Journal of Comparative Labour Law and Industrial Relations*.

Other Publications

Alfers L, "Our children do not get the attention they deserve" (2016) Durban, *WIEGO*.

Budlender D, *WIEGO Child Care Initiative Institutional Mapping of Child Care Actors* (South Africa, *WIEGO* 2015).

United Nations *Convention on the Rights of the Child* 1989 (New York: United Nations).

Menon S, 'SA's Unemployment Rate hits a 13-year High' *Times Live* 1 June 2017 at 15:08, available at <https://www.timeslive.co.za/news/south-africa/2017-06-01-sas-unemployment-rate-hits-a-13-year-high/> accessed on 1 December 2017.

Moussié R, *Child Care from the Perspective of Women in the Informal Economy* (2016) *UN Secretary-General's High Level Panel on Women's Economic Empowerment*.

Oxfam "Women's Economic Empowerment and Care: Baseline Research Report" (London, Oxfam 2015).

ANNEXURE A

Thank you for taking time to speak to me today.

Is it alright if I record the interview?

I'd just like to remind you that if you don't want to answer any of the questions you don't need to, let me know and we'll move on to the next one.

If at any time you no longer want to continue with the interview you can decide to stop.

I have with me a form on your consent to be a part of my study. I'd like to take a moment to go through it with you.

1. Please tell me about your children
2. Do you live with your children?
3. Who looks after your children while you are at work?
 - a. If they go to school, who looks after them after school/during the holidays?
4. Why did you choose this solution?
5. Are you happy with it?
6. Are you satisfied that your children are safe while you are at work?
7. Are there other options available to you? Why don't you use them?
8. How much time do you get to spend with your children (daily)?
9. How does your job impact your family life?
10. How does your job impact your relationship with your children?
11. Has looking after your children made being able to work more challenging?
 - a. Do you have any stories about how looking after your child made it difficult for you to earn money?
12. Does your employer have any children? Can you tell me about them?
13. Do you look after your employer's children at work?
14. In what ways do you look after them?

15. Do you have any last thoughts or stories that you would like to share with me?

Thank you again for taking time to speak to me. I am very grateful for your time and answers.

ANNEXURE B

Informed Consent Info Sheet:

I am a student at UCT doing a masters degree. I am doing research for my dissertation on what it's like to raise children while working as a domestic worker. The interview will involve questions about how your children are looked after while you are at work. At the moment there is not a lot of work that covers this issue, and I think it is important that the stories are told, because it is the first step to creating change.

The interview should take 15-20 minutes, and so will not take away much time from your day. I would like to schedule the interview at a time that is most convenient for you, and at a location that you are comfortable with. I would like to make a voice recording of the interview. I will only do this if you are comfortable with it.

I will interview about 10 people for my dissertation, and all the information I get will be written up to describe your stories. An important part of this is that it can be confidential. This means that you can choose whether you would like me to use your name. If you do not want to be identified, then your name won't appear anywhere in my work. You can decide at any point that you would like the information to be confidential. You can decide now, or at the end of the interview.

The interview is completely voluntary. It is your decision if you would like to take part, and you can decide at any time if you would like to leave my research - even during the interview or after we're done. If there are any questions that you don't want to answer then you can let me know, and we'll move on to the next one.

I will keep the interview in a password-protected file for up to three years. Because it is important to my research that I properly tell the story you have agreed to share with me, I will show you how I have written about your interview afterwards. This is so you can agree to the way I have written it.

You can suggest changes, and let me know if you feel that I have protected your identity.

If you have concerns about the research, its risks and benefits or about your rights as a research participant in this study, you may contact the Law Faculty Research Ethics Committee Administrator, Ms Lamize Viljoen, at +27 (0)21 650 3080 or at lamize.viljoen@uct.ac.za. Alternatively, you may write to the Law Faculty Research Ethics Committee Administrator, Room 6.29 Kramer Law Building, Law Faculty, UCT, Private Bag, Rondebosch 7701.

Signature

Date